158-2158

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 321.

MARION RUSSELL ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAXWELL LAND GRANT COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 12, 1891.

(14,893.)

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Judd & Detweiler, Printers, Washington, D. C., March 15, 1895.

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1 *Writ of Error to Circuit Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States to the judge of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, between The Maxwell Land Grant Company, plaintiff, and Marion Russell, Kate Harvey, Geo. Russell, Ella Russell, Halbert Russell, and Chas. Russell, heirs-at-law of Rich'd D. Russell, deceased, a manifest error hath happened, to the great damage of the said Marion Russell *et al.*, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, D. C., together with this writ, so that you have the same at said court on the 12th day of October, 1891, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this ninth day of December, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 115th year.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk*,
By MARK G. BRADFORD, *Deputy.*

Allowed by—

MOSES HALLETT,
District Judge.

2 [Endorsed:] Gen. No., —. —— court of the United States, ——. Marion Russell *et al.*, plaintiffs in error, *vs.* The Maxwell Land Grant Company. Writ of error to circuit court U. S., district of Colorado. Filed in —— court of the U. S. this — day of ——, A. D. 18—. —— ——, clerk, by —— ——, deputy clerk. Geo. R. Daley, attorney for plaintiffs in error.

Return.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In obedience to the command of the within writ, I herewith transmit to the honorable Supreme Court of the United States, at Washington, D. C., a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Pueblo, in said district, this ninth day of February, 1891.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk*,
By MARK G. BRADFORD,
Deputy Clerk.

A copy of this writ was duly lodged in the clerk's office, in the said circuit court, for the benefit of plaintiffs in error, on the ninth day of December, 1890.

WM. A. WILLARD, *Clerk*,
By MARK G. BRADFORD,
Deputy Clerk.

3 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

Pleas in the circuit court of the United States for the district of Colorado, sitting at Pueblo.

Be it remembered that on the 19th day of May, A. D. 1888, a complaint was filed in the above-named court in words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the — in and for the District of Colorado, to Sept. Term, A. D. 1888.

THE MAXWELL LAND GRANT COMPANY, a Citizen of The Netherlands, Incorporated by the Name Aforesaid by the Commercial Code of The Netherlands and Having Its Principal Place of Business Therein, Plaintiff,
vs.
R. D. RUSSELL, Defendant.

The plaintiff complains of the defendant, and alleges:

(1.) That plaintiff is a corporation duly organized under and by virtue of the laws of The Netherlands and resides therein, as well as the stockholders of said corporation resides in said country of The Netherlands. 4

(2.) That plaintiff has been since the 1st day of April, A. D. 1883, and now is the owner in fee-simple of all that certain tract or parcel of land situate in the county of Las Animas and State of Colorado known as the Beaubien and Miranda land grant or the Maxwell land grant, and that the plaintiff during all of said time has been and now is entitled to the possession thereof.

(3.) That on or about said date the defendant entered wrongfully and unlawfully upon a portion of said premises known and described as follows, to wit: That certain tract of land occupied by the defendant, bounded on north & west by land of Carsons, on east by land of Geo. Storz, and on south by the public highway, & known as the Russell ranch, and did then and there oust plaintiff of the possession thereof, and has since said time and now does wrongfully and unlawfully detain and withhold the possession thereof from the plaintiff, to its damage in the sum of one thousand dollars.

(4.) That plaintiff is the owner of in fee-simple and has
5 been since said date last mentioned and now is entitled to
the possession of the premises so entered upon and withheld by the defendant; that said premises are worth one thousand dollars; that the rents and profits of said premises are worth the sum of one hundred and fifty dollars per annum since said date.

Therefore plaintiff demands judgment against said defendant for the recovery of the possession of said premises and for the sum of two thousand dollars, rents and profits of the same since said date.

By JAMES M. JOHN,
Attorney for Plaintiff.

And afterwards and upon the 7th day of July, A. D. 1888, a demurrer to the foregoing complaint was filed in said court in words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States in and for the District of Colorado, Sitting at Pueblo.

THE MAXWELL LAND GRANT COMPANY, a Citizen of The Netherlands, Incorporated by the Name Aforesaid by the Commercial Code of The Netherlands and Having Its Principal Place of Business Therein, Plaintiff,
vs.
6 R. D. RUSSELL.

Demurrer.

And now comes the said defendant and demurs to the complaint of the said plaintiff and states the following causes of demurrer thereto:

First. Said complaint does not show that this court has jurisdiction, in that it fails to state that plaintiff is an alien or foreign corporation, and fails to state that defendant is a citizen and resident of the State of Colorado.

Second. It does not appear that the lands sued for is situated in the State of Colorado.

Third. That the said complaint does not state a cause of action, being uncertain, unintelligible, and contradictory.

Wherefore the defendant, for the causes aforesaid, asks if said plaintiff shall be permitted to have or maintain his said action thereof against this defendant.

R. D. RUSSELL,
By J. C. ELWELL, *His Att'y.*

7 And afterwards and upon the 16th day of October, A. D. 1888, the same being one of the judicial days of the special October term of the circuit court of the United States for the district of Colorado, sitting at Pueblo, Honorable Moses Hallet, district judge, presiding, the following, among other, proceedings was had in said court, to wit:

THE MAXWELL LAND GRANT COMPANY
vs.
R. D. RUSSELL.
} No. 150. Ejectment.

On this day come- the plaintiff, by its attorney, Chas. E. Gast, Esq., and, on motion of said attorney, leave was granted to said plaintiff to amend its complaint herein, and defendant is required to answer to said amended complaint by 2 o'clock p. m. the 17th instant.

And afterwards and upon the aforesaid 16th day of October, A. D. 1888, plaintiff filed its amended complaint in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the District of Colorado,
Sitting at Pueblo.

8 THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
R. D. RUSSELL, Defendant.

The plaintiff files this its amended complaint against the defendant, and alleges:

1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Kingdom of The Netherlands and is a citizen of said kingdom, and that the defendant is a citizen of the State of Colorado.

2. That plaintiff has been since the first day of April, A. D. 1882, and now is the owner in fee-simple of all that certain tract or parcel of land situate partly within the Territory of New Mexico and partly within the State of Colorado commonly known as the Maxwell land grant, whereof the boundaries are as follows: Commencing below the junction of the Rayado & Red rivers; from thence, in a direct line to the east, to the first hills; from thence, following the

course of Red river in a northerly direction, to the junction of the Una de Gato with Red river; from thence, following along said hills to the east of the Una de Gato river, to the summit of the table-land (mesa); from thence, turning northwest, following
9 said summit, to the summit of the mountain which separates the waters of the rivers which run towards the east from those which run to the west; from thence, following the summit of said mountain in a southerly direction, to the first hill east of the Rayado river; from thence, following along the brow of said hill, to the place of beginning, and that plaintiff during all of said time has been and now is entitled to the possession thereof.

3. That on or about the said date the defendant wrongfully and unlawfully entered upon a portion of said premises situate in Las Animas county, State of Colorado, to wit, a certain tract of land commonly known as the Russell ranch, bounded on the north and west by the land of one Carsons, on the east by the land of George Storz, and on the south by a public highway, and did then and there oust the plaintiff of the possession thereof and has ever since and now does wrongfully and unlawfully withhold the possession thereof from the plaintiff.

4. That the land so occupied by the defendant exceeds in value the sum of two thousand dollars, and that the rents and profits of said premises since the unlawful entry of the said defendant
10 to the date of the commencement of this suit and unlawfully received by the said defendant amount to the sum of two thousand dollars.

Wherefore plaintiff demands judgment against said defendant for the recovery of the possession of said premises and for the sum of two thousand dollars, rents and profits of the same, and costs of suit.

JAMES M. JOHN &
CHAS. E. GAST,
Att'ys for Pl't'ff.

And afterwards and upon the 11th day of April, A. D. 1889, the same being one of the judicial days of the April term, A. D. 1889, of the circuit court of the United States for the district of Colorado, sitting at Pueblo, Honorable Moses Hallett, district judge, presiding, the following, among other, proceedings was had, to wit:

THE MAXWELL LAND GRANT CO.
vs.
R. D. RUSSELL.
No. 150. Ejectment.

Now comes the plaintiff, by Chas. E. Gast., Esq., its attorney, and suggests to the court the death of the defendant, R. D. Russell, during the pendency of this action; whereupon, on motion of the plaintiff, by its said attorney, the court doth order that the
11 heirs-at-law of the said defendant, to wit, Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell, be substituted as defendants herein, and that summons issue accordingly.

And afterwards and upon the 29th day of October, A. D. 1889, a demurrer to the amended complaint herein was filed in said court in words and figures following, to wit:

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo.

THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
MARION RUSSELL, KATE HARVEY, GEORGE RUSSELL, Ella Russell, Halbert Russell, and Charles Russell, Heirs of Richard D. Russell, Deceased, Defendants.
} No. 150.

And now come the defendants above named and demur to the amended complaint filed in the clerk's office in the above-entitled cause for the reason that the same does not contain facts sufficient to constitute a cause of action.

EDWARD J. HILL,
Room 48, 159 La Salle St., Chicago, Ill., Attorney for Marion Russell & Kate Harvey.
12 GEORGE RUSSELL,
ELLA RUSSELL,
HALBERT RUSSELL, &
CHARLES RUSSELL,
By JOHN RUSSELL,
Their Next Friend, 82 Fulton St., Chicago, Ill.

EDWARD J. HILL, *Of Counsel.*

And afterwards and upon the 3d day of April, A. D. 1890, an answer to the amended complaint herein was filed in said court in words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss:*
District of Colorado,

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo.

THE MAXWELL LAND GRANT CO., Plaintiff,
vs.
MARION RUSSELL, KATE HARVEY, GEORGE RUSSELL, ELLA Russell, Halbert Russell, and Charles Russell, Heirs of Richard D. Russell, Deceased, Defendants.

Now come the said defendants, Marion Russell and Kate Harvey, by George R. Daley, their attorney, and the said defendants, George Russell, Ella Russell, Halbert Russell, and Charles Russell, by John K. Russell, their next friend, and for answer to the said 13 amended complaint heretofore filed in the above-entitled cause say:

1. They admit that the plaintiff is a corporation organized

and existing under and by virtue of the laws of the Kingdom of The Netherlands and a citizen of said kingdom, and that the defendants are citizens of the State of Colorado.

2. They deny that the plaintiff has ever been or now is the owner of a tract of land situated partly within the Territory of New Mexico and partly within the State of Colorado, known as the Maxwell land grant, and bounded as set forth in said amended complaint, or that the said plaintiff is entitled to the possession thereof.

3. They admit that these defendants are in possession of the premises known as the Russell ranch and bounded as set forth in said amended complaint, but deny that said premises are a portion of the said alleged Maxwell land grant described in said complaint or the property of the said plaintiff, and deny that the said plaintiff was ever in possession thereof or that these defendants or their ancestors ever ousted it therefrom or wrongfully withhold the possession from the said plaintiff.

14 4. They admit that the said lands so occupied by these defendants exceeds in value the sum of two thousand dollars, but deny that the rents and profits therefrom received by these defendants exceed the sum of two thousand dollars.

5. Further answering, these defendants say that on, to wit, the — day of ——, A. D. 1872, a large tract of land in the county of Las Animas and State of Colorado, being public lands of the United States, of which the premises occupied by these defendants and known as the Russell ranch is a portion, was surveyed and platted by the United States Government and the plat filed in the United States land office at Pueblo, Colorado; that according to said survey the premises now occupied by these defendants and known as said Russell ranch are described as follows, to wit: the west half of the southeast quarter, the northeast quarter of the southwest quarter, and the southwest quarter of the northeast quarter of section twenty, township thirty-three south, range sixty-eight west.

6. That defendants are the heirs-at-law of one Richard D.
15 Russell, who, on or about the first day of April, 1872, entered
upon the premises last above described and, to wit, on the date last aforesaid and pursuant to the statute in such case made and provided, made a valid and legal homestead entry of the said lands, and thereafter, within the time specified by the said statute, made all payments and did all other acts necessary on his part to be done to acquire title to and ownership of said premises; that from the date last aforesaid and up to the time of his decease, to wit, the 27th day of August, 1888, the said Richard D. Russell remained in the actual, open, and notorious possession of said premises and made valuable improvements thereon, and that these defendants have since been in the possession thereof as his heirs-at-law.

Wherefore these defendants pray to be hence dismissed with their costs in this behalf sustained.

GEO. R. DALEY,
Attorney for Defendants, 36 *Major Block, Chicago, Ill.*
JOHN K. RUSSELL,
Next Friend, 82 *Fulton St., Chicago, Ill.*

16 And afterwards and upon the 4th day of April, A. D. 1890, plaintiff filed a reply to the foregoing answer in words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court, Sitting at Pueblo.

THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
MARION RUSSELL *et als.*, Defendants.

Now comes the plaintiff and for a reply to the answer of the defendants herein alleges that the premises in controversy are part and parcel of what is commonly known as the Maxwell land grant, and that the same was granted to Charles Beaubien and Gaudalupe Miranda by Manuel Armijo, the civil and military governor of New Mexico, on the eleventh day of January, A. D. 1841, in due form of law, and that the said grant was afterwards, on the 21st day of June, A. D. 1860, confirmed by an act of Congress of the United States, and afterwards, to wit, on the 19th day of May, A. D. 1879, patented by the United States unto the said Charles Beaubien and Gaudalupe Miranda, their heirs and assigns, and 17 denies, therefore, that the said lands or any part of them were ever public lands of the United States subject to entry under the homestead laws, and denies that the said Richard D. Russell, the defendants' ancestor, made any valid or legal homestead entry of the same, or that he did any other act or thing to acquire title to the same.

CHAS. E. GAST,
JAMES M. JOHN,
Att'ys for Pl't'ff.

And afterward and to wit, upon the aforesaid 4th day of April, A. D. 1890, a stipulation was filed in words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court.

THE MAXWELL LAND GRANT CO.
vs.
THE HEIRS OF RUSSELL.

Agreed that a jury is waived in the trial of the above-entitled cause, and that the same may be tried to the court.

CHAS. E. GAST,
JAMES M. JOHN,
Att'y- for Pl't'ff.
GEO. R. DALEY,
Att'y for Def'ts.

18 And afterwards and on, to wit, the fifth day of April, A. D. 1890, the same being one of the judicial days of the April term of the circuit court of the United States, sitting at Pueblo, Honorable Moses Hallett, district judge, presiding, the following proceedings were had in said court, to wit:

THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
MARION RUSSELL *et als.*, Heirs of R. D. Russell, Deceased.
} No. 150. Ejectment.

Now, on this day, this cause came on to be heard upon the issues herein joined before the court, a jury being expressly waived by stipulation, the plaintiff appearing by Chas. E. Gast, Esq., its attorney, and the defendants by George R. Daley, Esq., their attorney; and this cause is heard by the court, and, after hearing the allegations of plaintiff and defendants and arguments of counsel, court, being fully advised, doth find for the plaintiff; that the plaintiff is entitled to the possession of that portion of the Maxwell land grant
described in the complaint herein as a certain tract of land,
19 commonly known as the Russell ranch, bounden on the
north and west by the land of one Carsons, on the east by the land of George Storz, and on the south by a public highway; and it is further considered by the court that the plaintiff recover of and from the said defendants the possession of the above-described premises and have writ of possession therefor according to the form, force, and effect of its recovery, and that the plaintiff recover against the defendants its costs and charges by it in this behalf expended and have execution therefor.

And, on motion of said defendants, day until thirty days is given to prepare and tender to the judge presiding at this trial their bill of exceptions by them reserved at the trial of this cause, and when so tendered and filed the said bill of exceptions shall have force and effect as of this day.

And it is further considered by the court that the defendants give bond on the writ of error within thirty days in the sum of one thousand dollars.

And afterwards and on, to wit, the 27th day of September, A. D. 1890, a motion for a new trial was filed in said court in words and figures following, to wit:

20 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo.

THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
MARION RUSSELL *et als.*, Defendants.

And now comes the said defendants, by Geo. R. Daley, their attorney, and respectfully represents that they have paid to the clerk of this court all the costs which have heretofore accrued in the above-entitled cause, and pray that a new trial be granted them in said cause in accordance with the statute.

GEORGE R. DALEY,
Att'y for Def'ts.

And afterwards and on, to wit, the 7th day of October, A. D. 1890, the same being one of the judicial days of the special October term, A. D. 1890, of the circuit court of the United States, sitting at Pueblo, Honorable Moses Hallett, district judge, presiding, the following proceedings were had, to wit:

THE MAXWELL LAND GRANT CO.
vs. } No. 150. Ejectment.
MARION RUSSELL *et als.*

21 Now, on this day, come the defendants, by George R. Daley, Esq., their attorney, and suggests to the court that the defendants have paid costs of former trial in this cause for the purpose of a new trial.

It is thereupon considered by the court that the judgment entered in this court in this cause at the April term, A. D. 1890, be, and the same is hereby, vacated pursuant to the statute in such case made and provided.

And afterwards and upon, to wit, the tenth day of October, A. D. 1890, the same being one of the judicial days of the special October term, A. D. 1890, of the circuit court aforesaid, Hon. Moses Hallett, district judge, presiding, the following proceeding was had, to wit:

THE MAXWELL LAND GRANT CO.
vs. } No. 150. Ejectment.
MARION RUSSELL *et als.*

Now, on this day, come- the plaintiff, by Chas. E. Gast, Esq., its attorney, and the defendants, by Geo. R. Daley, Esq., their attorney, also come, and this cause came on for trial upon the 22 issues joined herein; thereupon come a jury, to wit, P. B. Wilson (and eleven others), twelve good and lawful men, who were duly empaneled, tried, and sworn to well and truly try the matters at issue herein and a true verdict render according to the evidence, who, after hearing the evidence, under the instructions of the court return the following verdict, to wit:

We, the jury, find the issues for the plaintiff, and that the plaintiff owns in fee-simple the premises described in the complaint, and that the defendants unlawfully withhold the same.

And afterwards and upon, to wit, the 11th day of October, A. D. 1890, the same being one of the judicial days of the October term, 1890, of the circuit court aforesaid, Honorable Moses Hallett, district judge, presiding, the following proceeding was had in said court, to wit:

THE MAXWELL LAND GRANT COMPANY
vs.
MARION RUSSELL *et als.*
} Ejectment.

23 Now, on this day, this cause came on for hearing upon motion of defendants for a new trial herein, Chas. E. Gast, Esq., appearing for plaintiff and George R. Daley, Esq., appearing for defendants, and upon hearing court overruled said motion.

Thereupon it is considered by the court, by reason of the verdict of the jury in this cause heretofore entered, that the plaintiff recover of and from the defendants the possession of the premises described in the verdict of the jury aforesaid, and have writ of possession therefor according to the form, force, and effect of its recovery, and that the plaintiff recover against the defendants its costs and charges by it in this behalf expended and have execution therefor.

And, on motion of said defendants, day until sixty days is given to prepare and tender to the judge presiding at this trial their bill of exceptions by them reserved at the trial of this cause, and when so tendered and filed the said bill of exception- shall have force and effect as of this day; and it is further considered by the court that the defendants give bond on the writ of error within sixty days in the sum of one thousand dollars.

24 And afterward and on the aforesaid 11th day of October, 1890, an affidavit as to value was filed in said court in words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Colorado,
} *ss:*

In the Circuit Court of the United States for the District of Colorado,
Sitting at Pueblo, in the said State of Colorado.

THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
MARION RUSSELL, KATE HARVEY, GEORGE RUSSELL,
Ella Russell, Halbert Russell, and Charles Russell,
Heirs-at-law of Rich'd D. Russell, Dec'd, Defendants.
} Affidavit.

Alfred F. Tremain, being duly sworn, on oath says that he is acquainted with the premises described in the amended complaint in the above-entitled cause as the Russell ranch and with the value thereof, and that said premises exceed in value the sum of five thousand dollars. Affiant further says that the premises herein referred to are the same premises possession of which is sought to be recovered in the above cause.

(Signed) ALFRED F. TREMAIN.

25 Subscribed and sworn to before me this 10th day of October, A. D. 1890.

[L. S.] A. V. BRADFORD,
[NOTARIAL SEAL.] *Notary Public.*

(My commission expires April 29th, 1894.)

And afterward and on, to wit, the 9th day of December, A. D. 1890, the defendants filed their bill of exceptions in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo, in the State of Colorado.

THE MAXWELL LAND GRANT CO., Plaintiff,
v.
MARION RUSSELL, KATE HARVEY, GEORGE RUSSELL, ELLA RUSSELL, Halbert Russell, and Charles Russell, Heirs of Richard D. Russell, Deceased, Defendants.

Be it remembered that on a trial of this cause at a special term of this court begun and held in the city of Pueblo, in the State and district aforesaid, on the first Tuesday of October, 1890, before 26 the Honorable Moses Hallett, judge of the said court—Charles E. Gast and James M. John appearing for plaintiff, and George R. Daley for defendants—the plaintiff gave in evidence on its behalf as follows—that is to say:

The plaintiff offered in evidence the original patent from the United States to Charles Beaubien and Gaudalupe Miranda, dated the 19th day of May, A. D. 1879, the said original patent being in words and figures following, to wit:

Patent.

The United States of America to all whom these presents shall come, Greeting:

Whereas under the provisions of the eighth section of the act of Congress approved on the twenty-second day of July, anno Domini one thousand eight hundred and fifty-four, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," the private land claim of Charles Beaubien and Gaudalupe Miranda, situated principally in the Territory of New Mexico and partly in the State of Colorado, was recommended for confirmation by the surveyor general for the said Territory of New 27 Mexico in his report to Congress, dated September 17th, A. D. one thousand eight hundred and fifty-seven, which said report is in the words and figures as follows, to wit:

"Charles Beaubien and Gaudalupe Miranda.—This case was filed on the 23d February, 1857, and set for trial on the 28th of July. On the 8th day of January, 1841, Charles Beaubien and Gaudalupe Miranda petitioned Manuel Armijo, the civil and military governor of New Mexico, for a grant of land in the now county of Taos, commencing below the junction of the Rayado and Red river-; from thence, in a direct line to the east, to the first hills; from thence, following the course of Red river in a northerly direction, to the junction of the Una de Gato with Red river; from whence, following along said hills to the east of the Una de Gato river, to the summit of the table-land (mesa); from whence, turning northwest, following said summit, to the summit of the mountain which seperates the waters of the rivers which run towards the east from those which run to the west; from thence, following the summit of said mountain in a southerly direction, to the first hill east of the Rayado river; from thence, following along the brow of said hill, to the place of beginning.

"On the 11th day of January, 1841, Manuel Armijo, the
28 governor aforesaid, 'in conformity with the laws,' granted
the land to the petitioners to make such use of it as they saw proper.

"On the 22nd of February, 1843, the parties were placed in possession of the land granted by Cornelio Vigil, a justice of the peace of the first precinct of Taos, with all solemnities required by law and custom.

"On the 27th of February, 1844, this grant was suspended by a subsequent governor upon complaint made by one Priest Martinez, of Taos, for several reasons contained in the statement made by Beaubien on the 13th of April, 1844, to Armijo, who in the meanwhile had been reappointed to the office of civil and military governor of the department.

"On the 18th day of April, Armijo referred the statement of Beaubien, as well as the original petition, grant, and judicial possession, to the departmental assembly for its action in the premises. This body reversed the order of February 27th and approved the grant made by Armijo in 1841, which is referred to the prefect of the first district by the governor to issue his directions to cause the parties to be reinstated in their possessions, which order was issued
by the prefect on the 15th of April, 1844.

29 "The papers acted upon in this case are the originals, duly
authenticated by the testimony of competent witnesses.

"The grant having been confirmed by the departmental assembly and been in the constant occupation of the grantees from the date of the grant until the present time, as is proven by the testimony of witnesses, it is the opinion of this office that it is a good and valid grant, according to the laws and customs of the government of the Republic of Mexico and the decisions of the Supreme Court of the United States, as well as the treaty of Gaudalupe Hidalgo of the 2nd February, 1848, and is therefore confirmed to Charles Beaubien and Guadalupe Miranda, and is transmitted for the action of Congress in the premises.

"WILLIAM PELHAM,
"*Surveyor General.*

"Surveyor general's office, Santa Fé, New Mexico, September 17, 1857.

"SURVEYOR GENERAL'S OFFICE,
"SANTA FÉ, NEW MEXICO, *September 25th*, 1857.

"The foregoing is a correct copy of the original on file in this office.

"WILLIAM PELHAM,
"*Surveyor General.*"

And whereas it further appears that said private land claim was
subsequently confirmed as number 15 by the first section of
30 the act of Congress approved June 21st, A. D. one thousand
eight hundred and sixty, entitled "An act to confirm certain
private land claims in the Territory of New Mexico;"

And whereas there has been deposited in the General Land Office of the United States a return, with the descriptive notes and plat of the survey of the said claim confirmed as aforesaid, authenticated by the signature of the United States surveyor general for the Territory of New Mexico, which descriptive notes and plat of survey are in the words and figures as follows, to wit:

Descriptive notes of the survey of the grant to Charles Beaubien and Gaudalupe Miranda, principally in the Territory of New Mexico and partially in the State of Colorado, confirmed as private land claim number fifteen by act of Congress approved June twenty-first, one thousand eight hundred and sixty, to Charles Beaubien and Gaudalupe Miranda, and surveyed in September and October, one thousand eight hundred and seventy-seven, by Elkins and Marmon, United States deputy surveyors, under their contract number eighty, of August fifteenth, one thousand eight hundred and seventy-seven, Beginning at
a granite stone twenty-six by twelve by six inches in size, in
31 mounds of earth two and one-half feet high, from four pits
twenty-four by eighteen by twelve inches deep, which
stone is marked No. 15, beg. cor. B. & M. on side facing grant, and is situated on the east side of Red river, below the junction of the Rayado river with Red river, from which corner the northwest corner of stone ruins bears north thirty-nine degrees thirty minutes east, seventeen chains eighty links distant; Houx's house bears south thirty-four degrees west about twenty chains distant, latitude thirty-six degrees twelve minutes north; variation of needle, thirteen degrees fifteen minutes east; thence from said beginning corner east—magnetic variation of needle, thirteen degrees fifteen minutes east—at eleven chains a road bears northeast and southwest; at fifty-five chains twenty links foot of a low bluff bears northwest; at fifty-eight chains sixty links top of bluff, an old mound, also a limestone thirty by ten by three inches in size, with mound of stone three feet high and mound of earth from four pits twenty-four by eighteen by twelve inches deep, which stone is marked S. E. cor. B. & M. on side facing grant, from which a corner of Houx's house bears south eighty-five degrees west, about eighty chains distant, the said corner being the southeast corner of the said Beaubien and Miranda grant;

32 Thence from said southeast corner of said grant north eight degrees thirty minutes east—variation of needle, thirteen degrees thirty minutes east—at one mile a sandstone eighteen by eleven by seven inches in size, marked "1 M." on south side, with mound of earth; at two miles a sandstone seventeen by ten by three inches in size, marked "2 M." on south side, with mound of earth; at three miles a sandstone sixteen by ten by five inches in size, marked "3 M." on south side, with mound of earth; at three miles three chains seventy-five links the sixth correction line, north four chains seventy-five links east of corner to sections thirty-four and thirty-five, in range 23 east, township twenty-five north; at four miles a sandstone nineteen by fifteen by seven inches in size, marke- "4 M." on south side, with mound of stone; at five miles a sandstone fifteen by fifteen by seven inches in size, marked "5 M." on south side, with mound of earth; at six miles a sandstone seventeen by ten by six inches in size, marked "6 M." on south side, with mound of earth; at seven miles a sandstone fifteen by twelve by six inches in size, marked "7 M." on south side, with mound of earth; variation of needle, thirteen degrees twenty-five minutes east; at eight miles a sandstone thirteen by thirteen by seven inches in size, marked 8 M. on south side, with mound of earth; at nine miles a sandstone eighteen by ten by
33 five inches in size, marked 9 M. on south side, with mound of earth; variation of needle, thirteen degrees thirty-five minutes east; at nine miles twelve chains, north boundary of township twenty-five north, of range twenty-three east, one chain eighty links west of corner to sections one, two, thirty-five, and thirty-six; at ten miles a sandstone nineteen by thirteen by seven inches in size, marked 10 M. on south side, with mound of earth; at eleven miles a sandstone nineteen by ten by six inches in size, marked 11 M. on south side, with mound of earth; at twelve miles a sandstone seventeen by thirteen by eight inches in size, marked 12 M. on south side, with mound of earth; variation of needle, thirteen degrees thirty-five minutes east; at thirteen miles a sandstone seventeen by ten by five inches in size, marked 13 M. on south side, with mound of earth; at fourteen miles a sandstone fifteen by ten by six inches in size, marked 14 M. on south side, with mound of earth; at fifteen miles a sandstone eighteen by ten by seven inches in size, marked 15 M. on south side, with mound of earth; at fifteen miles nineteen chains twenty links, north boundary of township twenty-six north, of range twenty-three east, ten chains forty links west of corner to townships twenty-six and twenty-seven north, ranges twenty-
34 three and twenty-four east; at sixteen miles a sandstone thirteen by twelve by eight inches in size, marked 16 M. on south side, with mound of earth; at seventeen miles a sandstone eighteen by ten by six inches in size, marked 17 M. on south side, with mound of earth; variation of needle, thirteen degrees thirty-five minutes east; at eighteen miles a sandstone ten by ten by six inches in size, marked 18 M. on south side, with mound of earth; at nineteen miles a sandstone sixteen by twelve by seven inches in size, marked 19 M. on south side, with mound of earth; at twenty miles

a sandstone twelve by twelve by eight inches in size, marked 20 M. on south side, with mound of earth; at twenty-one miles a sandstone eighteen by eleven by six inches in size, marked 21 M. on south side, with mound of earth; at twenty-two miles as sandstone fifteen by ten by six inches in size, marked 22 M. on south side, with mound of earth; at twenty-three miles a sandstone eighteen by ten by seven inches in size, marked 23 M. on south side, with mound of earth; at twenty-four miles a malpais stone twenty-four by ten by eleven inches in size, marked 24 M. on south side, with mound of stone; at twenty-five miles a malpais stone sixteen by eleven by eight inches in size, marked 25 M. on south side, with mound of stone; at twenty-six miles a sandstone twenty by ten by six inches in size, marked 26 M.
on south side, with mound of stone, from which a pinon
35 twenty inches in diameter bears south twenty degrees east,
twenty links distant, and a pinon ten inches in diameter
bears north thirty degrees east, fifteen links distant; at twenty-seven miles a sandstone twenty by ten by six inches in size, marked 27 M. on south side, with mound of stone; variation of needle, thirteen degrees thirty minutes east; at 27 miles 18 chains fifty links intersection of the seventh correction line, north thirty-seven chains twenty links west of corner to sections thirty-two and thirty-three, township 29 north, in range twenty-four east; at twenty-eight miles a sandstone seventeen by thirteen by eight inches in size, marked 28 M. on south side, with mound of stone; at twenty-nine miles a sandstone nineteen by thirteen by seven inches in size, 29 M. on south side, with mound of earth; variation of needle, thirteen degrees thirty-five minutes east; at thirty miles a sandstone seventeen by eleven by eight inches in size, marked 30 M. on south side, with mound of earth; at thirty-one miles a sandstone seventeen by fifteen by five inches in size, marked 31 M. on south side, with mound of earth; at thirty-two miles a sandstone eighteen by ten by seven inches in size, marked on south side 32 M., with mound of earth; variation of needle, thirteen degrees thirty minutes east; at thirty-three miles a sandstone twenty by ten by eight
inches in size, marked 33 M. on south side, with mound of
36 earth, from *from* which a house bears south eight degrees
forty minutes east, about seventy chains distant; at thirty-
three miles six chains north boundary township twenty-nine north, range twenty-four east, seventy-five links west of quarter-section corner to sections four and thirty-three; at thirty-four miles a sandstone thirteen by thirteen by eight inches in size, marked 34 M. on south side, with mound of earth; variation of needle, thirteen degrees thirty minutes east; at thirty-five miles a scoria stone eighteen by ten by eight inches in size, marked 35 M. on south side, with mound of earth; variation of needle, thirteen degrees thirty minutes east; at thirty-six miles a scoria stone nineteen by ten by six inches in size, marked 36 M. on south side, with mound of earth; at thirty-seven miles a sandstone twenty by ten by eight inches in size, marked 37 M. on south side, with mound of stone; variation of needle, thirteen degrees twenty-five minutes east; at thirty-eight miles a sandstone seventeen by eleven by six

inches in size, marked 38 M. on south side, with mound of earth,
from which a cottonwood fifteen inches in diameter bears north
thirty-four degrees east, one hundred and fifty-five links distant;
cottonwood eighteen inches in diameter bears north eight degrees
east, one hundred and eighty links distant; at thirty-nine miles a
sandstone twenty by eleven by six inches in size, marked
37 39 M. on south side, with mound of earth; variation of needle,
thirteen degrees thirty-five minutes east; at forty miles a
sandstone nineteen by thirteen by five inches in size, marked 40 M.
on south side, with mound of earth, from which a house bears south
seventy-eight degrees west, about sixty chains distant; point of high
rock bluff bears north seventy-six degrees thirty minutes east, about
one mile distant; at forty-one miles a sandstone twenty-four by ten
by eleven inches in size, marked 41 M. on south side, with mound
of stone, from which a house bears south seventy-six degrees west,
about fifty chains distant; a house bears north fifty-six degrees
fifteen minutes west, about sixty chains distant; at forty-two miles
a sandstone eighteen by ten by seven inches in size, marked 42 M.
on south side, with mound of earth; at forty-three miles a sandstone
twenty by ten by eleven inches in size, marked 43 M. on
south side, with mound of earth; at forty-four miles a malpais stone
thirty by eleven by seven inches in size, marked 44 M. on south
side, with mound of stone; at forty-five miles a scoria stone twenty
by ten by six inches in size, marked 45 M. on south side, with
mound of earth; at forty-six miles a sandstone twenty by eleven
by six inches in size, marked 46 M. on south side, with mound of
stone; at forty-seven miles in cañon a sandstone twenty-four
38 by ten by eight inches in size, marked 47 M. on south side,
with mound of stone; at forty-seven miles fifty-two chains
fifty links the Colorado and New Mexican boundary line, thirty-three
chains seventy-six links west of seventy-two-mile corner; at
forty-eight miles a sandstone forty by ten by seven inches in size,
marked 48 M. on south side, with mound of stone; at forty-nine
miles, on side of cañon, a sandstone thirty by ten by eight inches in
size, marked 49 M. on south side, with mound of stone; variation
of needle, thirteen degrees thirty minutes east; at fifty miles a sandstone
twenty by eleven by five inches in size, marked 50 M. on
south side, with mound of stone; at fifty-one miles a sandstone seventeen
by ten by eight inches in size, marked 51 M. on south side,
with mound of earth; at fifty-one miles twenty-eight chains forty-six
links on north side of Chicorica mesa a sandstone twenty-four
by ten by six inches in size, marked N. E. cor. B. & M. on side
facing grant, with monument of stone four feet high, the same
being the northeast corner of said Beaubien and Miranda grant,
from which corner the town of El Moro, Colorado, bears north
twenty-nine degrees thirty minutes west, about twelve miles
distant; town of San Francisco bears north thirty-six degrees
thirty minutes west, about eight miles distant; prominent
peak of the Chicorica table-land bears north sixty
39 degrees fifteen minutes west; variation of needle, seven degrees
thirty minutes east; thence from said northeast corner

along the north edge of said table-land on course north sixty degrees fifteen minutes west—variation of needle, seven degrees thirty minutes east—at eleven chains eighty links, ledge of perpendicular rock bluff, a malpais stone twenty by ten by six inches in size, marked W. C. for witness corner for first mile on southeast side, with mound of stone, from which point to a prominent peak bearing north sixty degrees fifteen minutes west; said boundary line was established by triangulation, the same being a distance of six miles fifty-one chains forty links from the northeast corner of said grant, on which peak a sandstone twenty by fifteen by seven inches in size, marked W. C., with mound of stone, same being witness corner for second, third, fourth, fifth, and sixth miles at a point fifty-one chains forty links on seventh mile on north boundary of grant; thence west, at four miles five chains sixty links on course from the corner on said peak and ten miles fifty-seven chains from the northeast corner of said grant a sandstone thirty by eleven by six inches in size, marked W. C., with mound of stone, same being witness
corner for seventh, eighth, ninth, and tenth mile corners on
40 north boundary, from which a pine twenty inches in diame-
ter bears south eighty-eight degrees west, one hundred and fifty links distants; a pine fifteen inches in diameter bears north one hundred and sixty links distant; a pine ten inches in diameter bears north thirty-three degrees west, one hundred and seventy links distant, said corner being at foot of Chicorica mesa, in Raton cañon; variation of needle, thirteen degrees forty-five minutes east; at eleven miles on north boundary a sandstone twenty-four by ten by six inches in size, marked 11 M. on east side, with mound of stone, from which a collection of houses bears north fourteen degrees east and thirty chains distant; at twelve miles a sandstone sixteen by ten by seven inches in size, marked 12 M. on east side, with mound of stone; at thirteen miles a sandstone eighteen by eleven by six inches in size, marked 13 M. on east side, with mound of stone; variation of needle, fourteen degrees east; at fourteen miles a large sandstone in place, marked 14 M., from which a pine ten inches in diameter bears north thirty-three degrees west, fifty-one links distant; a pine eleven inches in diameter bears north five degrees east, forty-four links distant; a pine nine inches in diameter bears south fifty-three degrees thirty minutes east, eighty-four links dis-
tant; at fifteen miles a sandstone twenty by ten by five
41 inches in size, marked 15 M. on east side, from which a pine
twelve inches in diameter bears north seven degrees east, one hundred and ten links distant; a pine eight inches in diameter bears eighty-eight degrees thirty minutes east, two hundred and fifteen links distant; at sixteen miles a sandstone eighteen by twelve by seven inches in size, marked 16 M. on east side, with mound of stone, from which a house bears north fifteen degrees thirty minutes west, ten chains distant; a house bears south ten degrees west, about forty chains distant; variation, thirteen degrees forty-five minutes east; at seventeen miles a sandstone twenty-one by fifteen by four inches in size, marked 17 M. on east side, with mound of stone; variation of needle, fourteen degrees fifteen minutes east;

at eighteen miles a sandstone eighteen by sixteen by eight inches
in size, marked 18 M. on east side, with mound of stone; variation
of needle, fourteen degrees fifteen minutes east; at nineteen miles,
on top of rocky ridge, a sandstone fifteen by ten by four inches in
size, marked 19 M. on east side; variation of needle, fourteen degrees
twenty minutes east, from which a cedar ten inches in diameter
bears north twenty degrees west, one chain distant; at twenty
miles a sandstone twenty-four by eighteen by three inches
42 in size, marked 20 M. on east side, with mound of stone,
from which a cedar thirty inches in diameter bears north
forty-five degrees east, twenty links distant; a cedar twenty inches
in diameter bears south forty-five degrees west, thirty-five links distant;
variation of needle, fourteen degrees ten minutes east; at
twenty-one miles a sandstone seventeen by thirteen by six inches
in size, marked 21 M. on east side, with mound of stone; variation
of needle, thirteen degrees fifty minutes east; at twenty-one miles
twenty-five chains fifty links on a ridge a sandstone twenty by
eleven by six inches in size, marked B. M. on side facing grant,
with mound of stone; variation of needle, fourteen degrees ten
minutes east; thence along the north side of the Chicorica and
Raton range of mesas, bluffs, hills, and mountains on course north
sixty-six degrees thirty minutes west—variation of needle, fourteen
degrees ten minutes east—at fifty-four chains fifty links on course
and twenty-two miles on north boundary a sandstone eighteen by
ten by eight inches in size, marked 22 M. on east side, with mound
of stone; at twenty-three miles as sandstone nineteen by eleven by
six inches in size, marked 23 M. on east side, with mound of
stone; at twenty-four miles a sandstone sixteen by ten by seven
inches in size, marked 24 M. on east side, with mound
43 of stone; variation of needle, fourteen degrees twenty minutes
east; at twenty-four miles seventy-four chains fifty links,
edge of valley of Las Animas, a sandstone thirty by twenty-four by
eight inches in size, marked B. M. on side facing grant, with mound
of stone—variation of needle, fourteen degrees ten minutes east—
from which corner a house bears north twenty-nine degrees thirty
minutes east, twenty chains distant; a house bears north thirty-five
degrees thirty minutes west, thirty chains distant; corral bears
north seven degrees thirty minutes east, twenty-five chains distant;
thence on a meander of the valley of the Las Animas river, on
north side of said mesas, on course south eighty-nine degrees west—
variation of needle, fourteen degrees east—at one mile a stone twenty
by ten by six inches in size, marked B. M. on side facing grant,
with mound of stone; thence north forty-two degrees west—variation
of needle, thirteen degrees fifty minutes east—thirty-four chains
sixty links; thence north seventy-six degrees thirty minutes west,
forty-seven chains fifty links; thence north sixty-five degrees thirty
minutes west, fifty chains fifty links; thence south seventy-six
degrees thirty minutes west, seventy-five chains; thence north
seventy-three degrees west, four miles twelve chains; variation
44 of needle, thirteen degrees forty-five minutes east;
thence north twenty-six degrees west, nineteen chains;

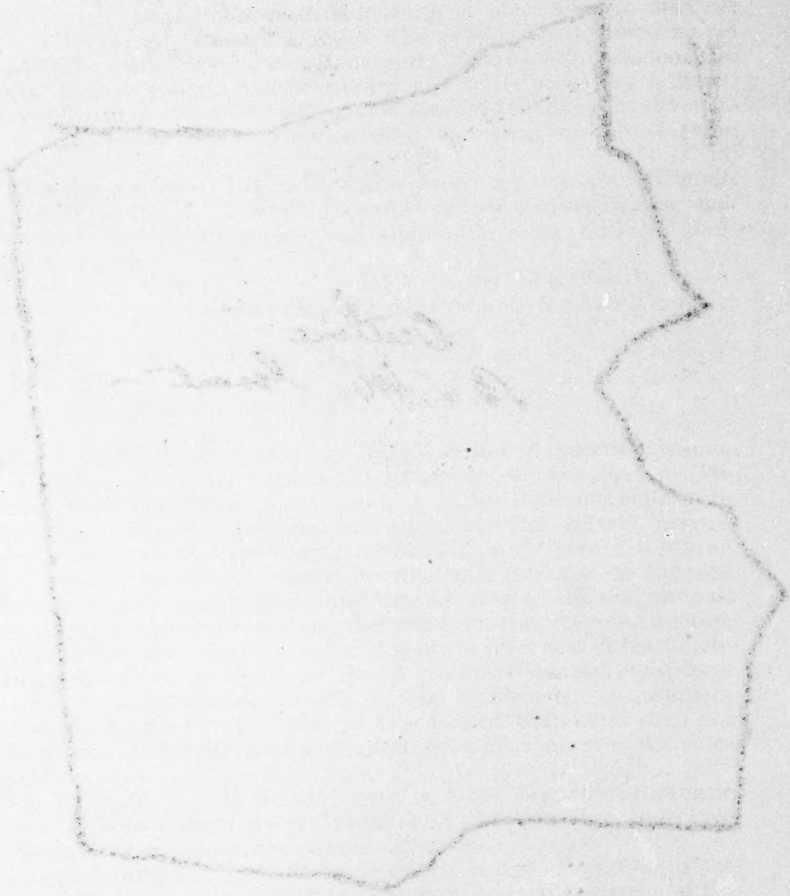
thence north fifty-six degrees west, thirty-nine chains; thence north seventy-three degrees thirty minutes west, eighty chains; thence north twenty-four degrees west, seventy-four chains; thence north forty-two degrees west, thirty chains; thence north thirty-nine degrees west, sixty-four chains, to a point where the Rio Las Animas comes in from due north, a sandstone twenty by eleven by seven inches in size, marked B. M. on side facing grant, with mound of stone, from which a pine eight inches in diameter bears north thirty-six degrees east, twenty links distant; a pine ten inches in diameter bears south ten degrees west, twelve links distant; a pine ten inches in diameter bears north seventy-eight degrees east, twenty-five links distant; rancho bears north five degrees thirty minutes west, twenty chains distant; fourth mound, erected by the alcalde in giving judicial possession, bears north sixty-seven degrees west; thence north sixty-seven degrees west—variation of needle, fourteen degrees east—at twenty-eight chains ninety links on course a sandstone twenty by eleven by six inches in size, marked 37 M. on east side, with mound of stone, same being thirty-seven-mile corner
on north boundary, from which a pine ten inches in diameter
45 bears south *south* twenty degrees east, twenty links distant; a
pine twelve inches in diameter bears north sixty degrees west, sixty-five links distant; at thirty-eight miles a sandstone eighteen by ten by six inches in size, marked 38 M. on southeast side, with mound of stone, from which a pine twenty inches in diameter bears north sixty-five degrees west, eighty links distant; a pine eight inches in diameter bears north eight degrees west, six links distant; a pine ten inches in diameter bears north sixty-seven degrees thirty minutes east, twenty-five links distant; variation of needle, thirteen degrees forty-five minutes east; at thirty-nine miles a sandstone twenty-four by twelve by eight inches in size, marked 39 M. on southeast side, with mound of stone, from which a pine ten inches in diameter bears south twenty-two degrees thirty minutes east, one hundred and six links distant; house bears south seventy-two degrees west, about forty chains distant; house bears north sixty-one degrees west, about twenty chains distant; variation of needle, thirteen degrees forty minutes east; at forty miles a sandstone twenty-four by ten by six inches in size, marked 40 M. on southeast side, with mound of stone, from which a pine eight inches in diameter bears north sixty degrees west, sixty links distant; rancho bears
south forty-nine degrees east, about seventy chains distant;
46 variation of needle, thirteen degrees forty-five minutes east;
at forty miles forty chains, foot of stone wall, a sandstone eighteen by eleven by seven inches in size, marked W. C. for witness corner, to forty-first-mile corner, with mound of stone; thence on same course north sixty-seven degrees west, a triangulated distance from said last described corner of five miles fifty-six chains forty links from said corner and forty-six miles sixteen chains forty links on north boundary of said grant, at a point on top of the mountain which divides the waters flowing east from those flowing west, a sandstone twenty-eight by twenty by eight inches in size, marked N. W. cor. B. & M., No. 15, for the northwest corner of said grant,

with monument of *of* stone four feet high, the same being at the place where the alcalde, in giving judicial possession to said grant, erected the fourth mound; thence from said northwest corner on a line established along the summit of said mountain range by triangulating from peak to peak of said mountain range on the following courses and distances: from said northwest corner south two degrees thirty minutes fifty-six seconds east to peak number one, three hundred and seventeen chains fifty-four links; thence south four degrees fifty-six minutes forty-two seconds west, three hundred and sixty-four chains four links to peak (No. 2)
47 number two; thence south eighteen degrees fourteen minutes
thirty-two seconds east one hundred and thirty chains sixty-four links to peak number three; thence south sixty-six degrees thirty-one minutes thirty-five seconds west two hundred and eighty-seven chains thirty-five links to peak number four; thence south sixteen degrees twenty-four minutes fifty-four seconds west six hundred and forty-five chains seventy-two links to peak number five; thence south forty-five degrees thirty-seven minutes eighteen seconds west three hundred and forty-three chains seventeen links to peak number six; thence south fifty-nine degrees thirty-eight minutes seventeen seconds east four hundred and sixty-nine chains twenty-eight links to peak number seven; thence south forty-six degrees forty-eight minutes fifty-four seconds east one hundred and ninety-one chains twenty-one links to peak number eight; thence south twenty-nine degrees twenty-five minutes thirty-seven seconds east one hundred and sixty-six chains twenty-two links to peak number nine; thence south thirty-six degrees four minutes fifteen seconds west three hundred and ninety-five chains twenty-six links to peak number ten; thence south eleven degrees fifty-five minutes eleven seconds west two hundred and one chains thirty-six links to
48 peak number eleven; thence south fifty degrees five minutes
forty-eight seconds west one hundred and fifty-eight chains twenty-five links to peak number twelve; thence south seventy-five degrees forty-eight minutes west four hundred and twelve chains forty-four links to peak number thirteen; thence south nineteen degrees five minutes eleven seconds west two hundred and sixty-seven chains seventy-seven links to peak number fourteen; thence south sixty-three degrees twenty-three minutes west eighty-four chains thirty-two links to peak number fifteen; thence south forty-three degrees nine minutes west two hundred and thirty-five chains thirteen links to peak number sixteen; thence south twenty-three degrees forty-six minutes forty-seven seconds east five hundred twenty-three chains eight links to peak number seventeen; thence south one degree twenty-nine minutes twelve seconds east nine hundred and thirty-seven chains ninety-one links to Cuesta del Orba, at fifth mound established by the alcalde in giving judicial possession to said grant, at which point is a sandstone twenty-four by eighteen by seven inches in size, marked S. W. cor. B. & M. No. 15 on side facing grant, with monument of stone four and one-half feet high, the same being the southwest corner of said grant, from which a mountain ash six

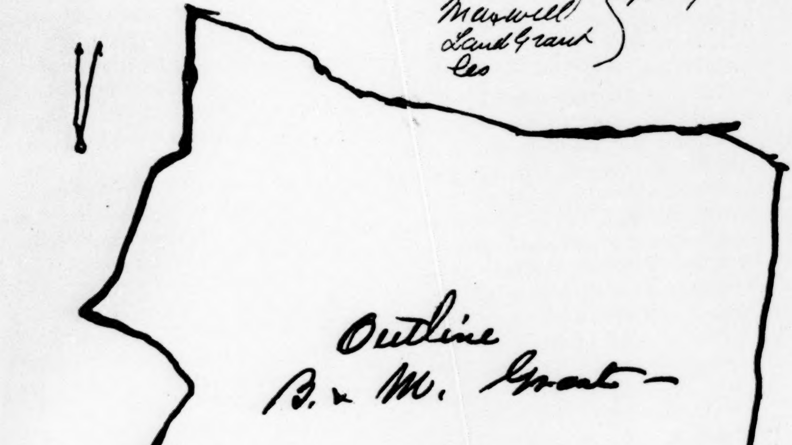
inches in diameter bears north twenty-seven degrees east,
49 eight links distant; a mountain ash eight inches in diameter bears south forty-five degrees west, twenty links distant; variation of needle, thirteen degrees forty-five minutes east; thence from said southwest corner on course east along a divide—variation of needle, thirteen degrees forty-five minutes east—at one mile a standstone eighteen by eleven by six inches in size, marked 1 M. on west side, with mound of stone, from which a spruce fourteen inches in diameter bears south seventy degrees west, twenty-two links distant; a spruce sixteen inches in diameter bears north twenty-nine degrees thirty minutes west, forty-four links distant; at two miles a sandstone sixteen by ten by eight inches in size, marked 2 M. on west side, with mound of stone, from which a spruce twelve inches in diameter bears south twenty-one degrees thirty minutes east, twenty-two links distant; a pine thirteen inches in diameter bears north twenty-one degrees thirty minutes west, forty-five links distant; at three miles a sandstone twenty-eight by ten by seven inches in size, marked 3 M. on west side, with mound of stone, from which a spruce fourteen inches in diameter bears south forty degrees east, twelve links distant; a spruce eight inches in diameter bears north fifty degrees west, twenty links distant; at four miles a
50 sandstone twenty by ten by five inches in size, marked 4 M. on west side, with mound of stone, from which a mountain ash eight inches in diameter bears north five degrees east, forty links distant; a spruce ten inches in diameter bears south forty-five degrees east, thirty-seven links distant; variation of needle, thirteen degrees thirty minutes east; at five miles a sandstone twenty by eleven by six inches in size, marked 5 M. on west side, with mound of stone; variation of needle, thirteen degrees forty-five minutes east; at six miles a sandstone eighteen by twelve by thirteen inches in size, marked 6 M. on west side, with mound of stone, from which a mountain ash six inches in diameter bears south sixty degrees west, fifty-eight links distant; a mountain ash eight inches in diameter bears north fifty degrees east, ninety-five links distant; at seven miles a sandstone seventeen by thirteen by eight inches in size, marked 7 M. on west side, with mound of stone, from which a mountain ash six inches in diameter bears north eight links distant; a mountain ash eight inches in diameter bears south fifty degrees east, fifty links distant; at eight miles a sandstone sixteen by ten by eight inches in size, marked 8 M. on west side, with mound of stone, from which a mountain ash ten inches in diameter bears south eighty-seven degrees west and
51 seventeen links distant; a mountain ash eight inches in diameter bears south sixty degrees east, twenty-four links distant; at nine miles a malpais stone twenty by ten by six inches in size, marked 9 M. on west side, with mound of stone; at ten miles a malpais stone nineteen by fifteen by six inches in size, marked 10 M. on west side, with mound of stone; at eleven miles a scoria stone twenty by ten by six inches in size, marked 11 M. on west side, with mound of stone; variation of needle, thirteen degrees thirty-five minutes east; at twelve miles a sandstone fifteen

by fifteen by ten inches in size, marked 12 M. on west side, with mound of stone; at thirteen miles a sandstone twenty by ten by five inches in size, marked 13 M. on west side, with mound of stone, from which a pine ten inches in diameter bears south twenty-two links distant: a pine thirteen inches in diameter bears south eighty-seven degrees west, twenty-three links distant; variation of needle, thirteen degrees thirty minutes east; at fourteen miles a sandstone twenty by eleven by seven inches in size, marked 14 M. on west side, with mound of stone; variation of needle, twelve degrees east; at fifteen miles a sandstone eighteen by ten by six
inches in size, marked 15 M. on west side, with mound of
52 stone, from which a pine fifteen inches in diameter bears
south forty degrees east, thirty-four links distant; a mountain ash eight inches in diameter bears west twenty links distant; variation of needle, thirteen degrees fifty minutes east; at sixteen miles a sandstone twenty by eight by six inches in size, marked 16 M. on west side, with mound of stone, from which a pine sixteen inches in diameter bears north thirty-five degrees east, twenty-one links distant; a pine ten inches in diameter bears north fifty degrees west, seventeen links distant; variation of needle, thirteen degrees thirty minutes east; at seventeen miles a sandstone eighteen by ten by eight inches in size, marked 17 M. on west side, with mound of stone, from which a pine twenty inches in diameter bears south sixty degrees east, fifty-eight links distant; a pine fifteen inches in diameter bears north fifty-five degrees east, forty-two links distant; at seventeen miles thirty-two chains a sandstone twenty-one by sixteen by seven inches in size, marked B. M. on side facing grant, with mound of stone four feet high, from which a pine eighteen inches in diameter bears south sixty-four degrees east, twenty links distant; a pine ten inches in diameter bears north eighty-seven degrees west, seventeen
links distant; variation of needle, thirteen degrees thirty
53 minutes east; thence south fifty-seven degrees fifteen min-
utes east—variation of needle, thirteen degrees east—at one mile on course a scoria stone twenty by ten by six inches in size, marked 1 M. on northwest side, with mound of stone, from which a pine twelve inches in diameter bears north thirty degrees east, thirty-four links distant; a pine fifteen inches in diameter bears south thirty degrees west, forty-eight links distant; at two miles a scoria stone eighteen by ten by six inches in size, marked 2 M. on northwest side, with mound of stone, from which a pine twelve inches in diameter bears south sixty-five degrees east, twenty-three links distant; a pine ten inches in diameter bears south sixty-five degrees west, twenty-three links distant; variation of needle, thirteen degrees forty-five minutes east; at three miles a scoria stone seventeen by ten by six inches in size, marked 3 M. on northwest side, with mound of stone, from which a pine twelve inches in diameter bears east, seven links distant; a pine ten inches in diameter bears south eighty degrees west, twenty-six links distant; variation of needle, thirteen degrees forty minutes east; at four miles a sandstone sixteen by eleven by eight inches in size, marked 4 M. on

northwest side, with mound of stone, from which a pine six
54 inches in diameter bears north eighty-seven degrees west, eight
links distant; a pine ten inches in diameter bears south
eighty degrees east, ten links distant; variation of needle, thirteen
degrees forty-five minutes east; thence south forty-five degrees east
on meander of south edge of Rayado and Gonzalitos mesas—variation
of needle, thirteen degrees fifty minutes east—at two miles
sixty-six chains fifty links on course a sandstone nineteen by six
by five inches in size, marked B. M. on side facing grant, with
mound of stone; thence south sixty-three degrees fifteen minutes
east—variation of needle, thirteen degrees thirty minutes east—at
two miles fifty-five chains on course a sandstone twenty by eleven
by six inches in size, marked B. M. on side facing grant, with mound
of stone, the same being at the southwest base of Mesa Rayado;
thence along the south edge of said Rayado mesa north sixty-five
degrees east—variation of needle, fourteen degrees east—at three
miles thirty chains on course a sandstone sixteen by ten by five
inches in size, marked B. M. on southwest side, with mound of
stone, the same being at the southeast base of Mesa Rayado;
thence south seventy-eight degrees east—variation of needle, thirteen
degrees thirty minutes east—at three miles ten chains
55 twenty links on course a sandstone thirty by eleven by six
inches in size, marked B. M. on side facing grant, with mound
of stone four feet high, the same being at a place where the sixth
mound was erected by the alcalde in giving judicial possession to
said grant; thence north eighty-five degrees ten minutes east—
variation of needle, eleven degrees forty-five minutes east—at one
mile on course a sandstone eighteen by ten by five inches in size,
marked 1 M. on west side, with mound of stone; at two miles a
sandstone seventeen by eleven by six inches in size, marked 2 M.
on west side, with mound of earth; variation of needle, twelve degrees
forty minutes east; at three miles a sandstone seventeen by
thirteen by eight inches in size, marked 3 M. on west side, with
mound of earth; at four miles a sandstone seventeen by ten by
eight inches in size, marked 4 M. on west side, with mound of earth;
variation of needle, twelve degrees fifty minutes east; at five miles a
sandstone nineteen by eleven by six inches in size, marked 5 M. on
west side, with mound of earth; variation of needle, thirteen degrees
fifty minutes east; at six miles a sandstone seventeen by
thirteen by six inches in size, marked 6 M. on west side, with mound
of earth; variation of needle, thirteen degrees fifty minutes
56 east; at seven miles a sandstone sixteen by ten by five inches
in size, marked 7 M. on west side, with mound of earth;
variation of needle, fourteen degrees east; at eight miles a sandstone
seventeen by thirteen by eight inches in size, marked 8 M. on west
side, with mound of earth; at nine miles a sandstone twenty by ten
by three inches in size, marked 9 M. on west side, with mound of
earth; at ten miles a sandstone seventeen by eleven by six inches
inches in size, marked 10 M. on west side, with mound of earth;
variation of needle, thirteen degrees forty minutes east; at eleven
miles a sandstone seventeen by twelve by five inches in size, marked



No 321.
Russell et al
v
Maxwell
Land Grant
Co
} p 54^{a}



11 M. on west side, with mound of earth; at twelve miles a sandstone seventeen by ten by six inches in size, marked 12 M. on west side, with mound of earth; at thirteen miles a sandstone sixteen by eleven by five inches in size, marked 13 M. on west side, with mound of stone; at fourteen miles a sandstone twenty by eleven by eight inches in size, marked 14 M. on west side, with mound of earth; variation of needle, thirteen degrees forty-five minutes east; at fifteen miles a sandstone sixteen by eleven by six inches in size, marked 15 M. on west side, with mound of earth; at fifteen miles forty-five chains eighty-eight links a sandstone twenty-four by ten by six inches in size, marked B. M. on side facing grant, 57 with mound of stone, same being at place on west bank of Red river where the alcalde who gave judicial possession to said grant erected the seventh mound; thence east three chains sixty links to the place of beginning, and containing one million seven hundred and fourteen thousand seven hundred and sixty-four and ninety-four one-hundre-ths acres according to said survey thereof.

In witness whereof I have hereunto signed my name officially, at my office, in the city of Santa Fé and Territory of New Mexico, this sixteenth day of December, one thousand eight hundred and seventy-eight.

HENRY M. ATKINSON,
United States Surveyor General for New Mexico.

(*Outline of Plat*) *B. & M. Grant.*

(Here follows diagram marked p. 57*a*).

58 Now, know ye that the United States of America, in consideration of the premises and pursuant to the second section of the act of Congress of third March, A. D. one thousand eight hundred and sixty-nine, entitled "An act to confirm certain private land claims in the Territory of New Mexico," have given and granted, and by these presents do give and grant, unto the said Charles Beaubien and Guadalupe Miranda, their heirs and assigns, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the provision of the fourth section of the said act of June 21st, A. D. one thousand eight hundred and sixty, this patent shall only be construed as a quitclaim or relinquishment on the part of the United States and shall not effect the adverse rights of any other person or persons whomsoever:

To have and to hold the said tract, with the appurtenances, unto the said Charles Beaubien and Guadalupe Miranda, their heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

59 Given under my hand, at the city of Washington, this nineteenth day of May, in the year of our Lord one thousand

eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

By the President:

[SEAL.] (Signed) R. B. HAYES,
By WM. H. CROOK, *Secretary.*

(Signed) S. H. CLARK,
Recorder of the General Land Office.

(Recorded, vol. 17, pp. 1 to 25, inclusive.)

STATE OF COLORADO, }
Las Animas County, } *ss:*

I hereby certify that the within instrument of writing was filed for record in my office at five o'clock p. m., July 12, 1879, and was duly recorded in Book 9, pages 177 to 195, inclusive.

[SEAL.] (Signed) JESUS MA. GARCIA, *Recorder,*
By E. B. SOPRIS, *Deputy.*

TERRITORY OF NEW MEXICO, }
County of Colfax, } *ss:*

I, the undersigned clerk of the probate court and *ex officio* county recorder within and for said county, in the Territory aforesaid, do hereby certify that the within patent was filed for record in my office this 18th day July, A. D. 1879, at 8 o'clock a. m., and duly recorded in Deed Book "B," pages 210 to 229, inclusive.

60 Witness my hand and official seal this 18th day of July, A. D. 1879.

[SEAL.] JOHN LEE,
Probate Clerk and ex Officio County Recorder.

61 It is admitted by counsel for defendants that the premises in controversy and known as the Russell ranch are within the bounds of the survey of the surveyor general of New Mexico according to said survey and the field-notes thereof as incorporated in said patent. It is also admitted by counsel for defendants that the plaintiff acquired by mesne conveyances whatever title passed to said Beaubien and Miranda by said patent, not admitting, however, that said Beaubien and Miranda acquired any title thereby.

And thereupon the defendants gave in evidence on their behalf as follows, to wit: A certified copy of a plat of township 33 south, range 68 west, in the State of Colorado; which said plat is in words, figures, and lines as follows:

(Here follows diagram marked p. 61*a*.)

62 Also a certified transcript of the field-notes of section twenty (20), in township thirty-three (33), range sixty-eight (68) west, in the State of Colorado; which transcript is in words and figures as follows:

("EXHIBIT 2.")

(4–207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 1st*, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed three pages are true and literal exemplifications of so much of the transcript of the field-notes of the survey of township thirty-three south, of range sixty-eight west, of the sixth principal meridian in the State of Colorado as they purport to show.

Seal General Land Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) LEWIS A. GROFF,
Commissioner of General Land Office.

63 Transcript of the field-notes of the survey of the subdivisional lines in township No. 33 S., R. 68 W., of 6th prin. guide meridian in Colorado, by Wm. A. Christian and J. H. Martz, deputy surveyors, under their contract of Oct. 24th, 1871; the township surveyed by Wm. A. Christian; survey commenced Dec. 1st, 1871; completed Dec. 29th, 1871.

* * * * * * *

N. between secs. 20 & 21.

Va., 13° E.

7.00	Stream 5 links wide, course E.
11 50	Stream 3 links wide, course S. E.
21.07	Stream 4 links wide, course S. 10° E.
40.00	Set sandstone 48 x 28 x 12 for ¼ sec. cor.
80.00	Set sandstone 34 x 24 x 10 for cor. to secs. 16, 17, 20, & 21.
	Surface, broken; soil, 2 rate.

* * * * * * *

E. on random line between secs. 20 & 29.

Va., 14° E.

1.17	Leave bottom land and foot of mountain.
10.15	Top of mountain.
30.17	Foot of mountain and enter bottom land.
32.37	Stream of water, course N. E.
40.00	Set temp. ¼ sec. cor.
77.73	Stream bears S. E.

64

80.13	Intersected N. & S. line 13 links S. of cor., from which cor. I ran S. 89° 54′ W. on a true line.
40.06	Set sandstone 24 x 18 x 12 for ¼ sec. cor.
80.13	The cor. to secs. 19, 20, 29, & 30.
	Surface, broken; soil, 2nd rate; veg., pine timber.

* * * * * * *

N. between secs. 19 & 20.

Va., 13° E.

40.00	Set sandstone 17 x 16 x 7 for ¼ sec. cor.
80.00	Set sandstone 24 x 20 x 9 for cor. to secs. 17, 18, 19, & 20.
	Surface, broken; soil, 2nd rate.

E. on random line between secs. 17 & 20.

Va., 14° E.

35.70	Enters bottom lands.
40.00	Set temp. ¼ sec. cor.
59.53	Stream 13 links wide, course south.
63.00	Leave bottom land.
80.29	Intersected N. & S. line 15 links south of cor., from which cor. I ran S. 89° 54 W. on a true line.
40.14	Set sandstone 19 x 16 x 7 for ¼ sec. cor.
80.29	The cor. to secs. 17, 18, 19, 20.
	Surface, rough; soil, 2nd rate.

Dec. 19, 1871.

* * * * * * *

I, Jacob H. Martz, deputy surveyor, do solemnly swear 65 that in pursuance of a joint contract *wherein* Jacob H. Martz and William A. Christain, contractors, with Wm. H. Lessig, United States surveyor general for Colorado Territory, bearing date the 24th day of October, 1871, I have well, faithfully, and truly, in my proper person and in strict conformity with the instructions furnished by the said surveyor general, the surveying manuel, and the laws of the United States, surveyed all that part or portion of the subdivisions, T. 33 S., R. 60 W.; tps. 32 & 33 S., R. 67 W., and T. 33 S., R. 68 W., of the 6th guide meridian in Colorado, as are represented in the foregoing field-notes as having been surveyed under my direction; and I do further solemnly swear that all the corners of such survey have been established and perpetuated in strict accordance with the surveying manual and the printed instructions, and that the foregoing are the true and original field-notes of such survey.

JACOB H. MARTZ,
Deputy Surveyor.

Subscribed by Jacob H. Martz, deputy surveyor, and sworn to before me, a justice of the peace for the county of Pueblo, in the Territory of Colorado, this 25th day of December, A. D. 1871.

G. W. HEPBURN,
P. J. & ex Officio J. P.

66 SURVEYOR GENERAL'S OFFICE,
DENVER, COLORADO, *Feb'y 24th,* 1872.

The foregoing field-notes of the subdivisional lines of tps. No. 33 S., R. 60 W., 32 & 33 S., R. 67 W., and 33 S., R. 68 W., of the sixth principal meridian in Colorado, executed by Jacob H. Martz & Wm. A. Christain under joint contract of Oct. 24th, 1871, having been critically examined, the necessary corrections & explanations made, the said field-notes and the surveys they describe are hereby approved.

W. H. LESSIG,
Surveyor General of Colorado.

I certify that the foregoing transcript of the subdivisional lines of T. No. 33 S., R. 60 W., and 32 & 33 S., R. 67 W., and 33 S., R. 68 W., have been correctly copied from the original notes now on file at this office.

W. H. LESSIG,
Surveyor General of Colorado.

Also a certified transcript of the papers on file in the office of the Commissioner of the General Land Office relating to the homestead entry of Richard D. Russell for the west half of the southeast quarter, the northeast quarter of the southwest quarter, and the southwest quarter of the northeast quarter of section twenty
67 (20), township thirty-three (33) south, range sixty-eight (68)
west, of the sixth principal meridian; which transcript of said papers is in words and figures as follows, to wit:

D. (4–207.) J. R. C.
J. B. L.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 1st,* 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, hereby certify that the annexed twenty-four pages are true and literal exemplifications of the original, of the original and final homestead papers, and copies of certified copies showing the military service of Richard D. Russell for Pueblo, Colorado, final homestead entry No. 199, for W. ½ of S. E. ¼ and N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, sec. 20, T. 33 S., R. 68 W., 6th prin. meridian.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

(Soldiers' and sailors' homestead under act June 8, 1872.)

Homestead.

Application No. 547.

68 LAND OFFICE AT ——, *April 6th,* 1874.

I, Richard D. Russell, of Las Animas county, Colo., do hereby apply to enter, under the provisions of the act of June 8, 1872, amendatory of an act entitled "An act to enable honorably discharged soldiers and sailors, their widows and orphan children, to secure homesteads on the public domain," the W. ½ of S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼ of section 20, in township 33 south, of range 68 west, containing 160 acres, and on which said land I am now residing and have so resided for more than two years and for which I filed my declaration on the — day of April, 1874.

RICHARD D. RUSSELL.

LAND OFFICE AT PUEBLO, COLORADO, *June 6th,* 1874.

I, Keyes Danforth, register of the land office, do hereby certify that Richard D. Russell filed the above application at this office on the 6th day of June, 1874, and that he has taken the oath and paid the fees and commissions prescribed by law.

KEYES DANFORTH, *Register.*

(Soldiers' & sailors' homestead under act of June 8, 1872.)

Affidavit.

No. 547.

LAND OFFICE AT ——, *April 6th,* 1874.

69 I, Richard D. Russell, of Las Animas Co., Col., do solemnly swear that I am a citizen of the United States, the head of a family, & of the age of twenty-one years and a citizen of the United States; that I served three years, less six days, in Co. D, 1st reg't cavalry United States, California volunteers; that I was mustered into the United States military service the 6th day of August, 1861, and was honorably discharged therefrom on the 31st day of July, 1864, and thereafter served as an officer in the U. S. service more than two years; that I have since borne true allegiance to the Government, and that I have made my application, No. 547, to enter a tract of land under the provisions of the act of June 8, 1872, giving homesteads to honorably discharged soldiers and sailors, their widows and orphan children; that I have made said application in good faith, and that I take said homestead for the purpose of actual settlement and cultivation and for my own exclusive use and benefit and for the use and benefit of no other person or persons whatsoever, and that I have not heretofore acquired a title to a tract of land under this or the original homestead law, approved May 20th, 1862, or the amendments thereto, or voluntarily relinquished or

abandoned an entry heretofore made under said act, and that
70 I am now an actual resident upon said land and am prevented by the great distance of the land office from my home from attending in person at the land office at Pueblo, Colo., so help me God.

RICHARD D. RUSSELL.

Sworn and subscribed to before me this 6th day of April, 1874.

JESUS MA. GARCIA,
Clerk in and for Las Animas Co., Colo.,
[SEAL.] By RAFAEL CHACON, *Deputy.*

Homestead.

LAND OFFICE AT PUEBLO, COLORADO, *Sept.* 5, 1876.

Act June 8, 1872.

Certificate No. 199. Application No. 547.

It is hereby certified that pursuant to the provisions of the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," Richard D. Russell has made payment in full for the W. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, & S. W. ¼ of N. E. ¼ of section twenty (20), in township 33 south, range 68 west, containing 160 acres.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said
71 Richard D. Russell shall be entitled to a patent for the tract of land above described.

KEYES DANFORTH, *Register.*

To all whom it may concern:

Know ye that Richard D. Russell, capt. of Co. "E," first regiment of infantry, New Mexico volunteers, who was enrolled on the
4
26th day of August, 1866, to serve three years or during the war, is hereby discharged from the service of the United States the eighth day of October, 1866, at Fort Union, New Mexico, by order of general com'd'g dist. of New Mexico. Dated Oct. 4, 1866. (* No objection to his being re-enlisted is known to exist.)

Said Richard D. Russell was born in Durham county, in the State of Canada.

Given at Fort Union, N. M., this eleventh day of October, A. D. 1866.

(Signed) MARTIN MULLINS,
Capt. 5th U. S. Inf., A. C. M.

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* This sentence should be erased should there be anything in the conduct or physical condition of the soldier rendering him unfit for the army.

[On margin:]

Paid Oct. 17, 1866.

J. HAN WALES,
A. D. P., U. S. A.

STATE OF COLORADO, } *ss:*
County of Pueblo, }

I, H. K. Pinckney, a notary public within and for the county of
Pueblo and State aforesaid, do hereby certify that the fore-
72 going is a true copy from the original discharge of Richard
D. Russell, and that I have this day copied and compared the
same and declare it a true copy.

Witness my hand & notarial seal, at Pueblo, Colo., this 6th day of Sept., 1876.

[SEAL.] H. K. PINCKNEY,
Notary Public.

To all whom it may concern:

Know ye that Richard D. Russell, a private of Captain Nathaniel J. Peshon's Co. "D," 1st reg't of cav., California volunteers, who was enrolled on the 6th day of Sept., 1861, to serve for three years or during the war, is hereby dischared from the service of the United States this thirty-first day of Aug., 1864, at Santa Fé, New Mexico, by authority of the department commander. (* No objection to his being re-enlisted is known to exist.)

Said Richard D. Russell was born in Durham county, in Canada West; is twenty-five years of age, five feet 9½ inches high, light complexion, grey eyes, sandy hair, and by occupation, when enrolled, a farmer.

Given at Santa Fé, New Mexico, this 21st day of August, A. D. 1864.

N. A. LEWIS,
Capt. 5th Inf., Com. of Musters.

ERASTUS W. WOOD,
1st Lt. 1st Inf., Cala. V., Com'd Escort.

[On margin:]

Paid bounty Sept. 28, 1866.

J. HOWARD WALLS.

73 STATE OF COLORADO, } *ss:*
County of Pueblo, }

I, H. K. Pinckney, a notary public within and for the county of Pueblo and State aforesaid, do hereby certify that the foregoing is a true copy from the original discharge of Richard D. Russell, and that I have this day copied and compared the same and declare it a true copy.

Witness my hand & notarial seal this 6th day of Sept., A. D. 1876.

[SEAL.] H. K. PINCKNEY,
Notary Public.

Legal Notices.

To whom it may concern:

Notice is hereby given that I, Richard D. Russell, will appear before Jesus Ma. Garcia, J. P., at his office, in precinct No. 1 of Las

Animas county, on Saturday, March 14, 1874, to take proof of the non-mineral character of the W. ½ of N. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, sec. 20, twp. 33 S., R. 68 W., in Las Animas county, Colorado, with a view to enter the same as a homestead under the U. S. laws.

RICHARD D. RUSSELL.

Feb. 12, 1874, 4t.

74 TERRITORY OF COLORADO, *County of Las Animas,* } *ss:*

I, John C. Fitman, publisher of the Trinidad Enterprise, a weekly newspaper published at Trinidad, in the county of Las Animas and Territory of Colorado, do hereby certify that the foregoing and annexed notice was published in the Trinidad Enterprise and in every copy of such issue thereof for the period of five successive weeks; that the first publication thereof was on the 12th day of Feb'y, 1874, and that the last publication was on the 12th day of March, A. D. 1874.

In testimony whereof I have this sixth (6th) day of April, A. D. 1874, set my hand at Trinidad, Colorado.

JOHN C. FITMAN,
Publisher of the Trinidad Enterprise.

Sworn and subscribed to before me this April seventh, A. D. 1874.

A. G. STARK, [L. S.]
Justice of the Peace.

COUNTY OF LAS ANIMAS, *Territory of Colorado,* } *ss:*

On this 14th day of March, 1874, before me, Jesus Maria Garcia, a
justice of the peace in and for precinct No. 1, in the county and
75 Territory aforesaid, personally appeared Chas. E. Slade (known
to me as a resident of the county and Territory aforesaid),
who, being duly sworn according to law, deposes and says that he resides in precinct No. 1, in the county of Las Animas and Territory of Colorado; that he is familiar with the following-described land, viz., the W. ½ of *of* S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. of N. E. ¼, sec. 20, twp. 33 S., range 68 west, in Las Animas county, C. T.; that he, the deponent, has walked over said land several times and noticed its nature, by request, and there is not the least sign of mineral upon it, and the deponent believes the said land is agricultural land only.

CHAS. E. SLADE.

Sworn to and subscribed before me, in precinct No. 1, county of Las Animas, Territory of Colorado, this 14th day of March, 1874.

JESUS MARIA GARCIA,
Justice of the Peace.

PRECINCT NO. 1, COUNTY OF LAS ANIMAS,
TERRITORY OF COLORADO, *March 14th*, 1874.

I, Jesus Maria Garcia, a justice of the peace in for the precinct, county, and Territory aforesaid, hereby certify that Richard D. Russell (well known to me as a resident of precinct No. 1, Las Animas county, C. T.) personally appeared before me this
76 day for the purpose of offering evidence as to the non-mineral
character of the following-described land, viz., the W. ½ of S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼ of sec. 20, twp. 33 south, of range 68 west, in Las Animas county; that the only evidence offered was given by Chas. E. Slade, Geo. B. Hendricks, & John Pittman, and that there was no evidence of any nature offered to show the aforesaid land is mineral.

JESUS MARIA GARCIA,
Justice of the Peace.

COUNTY OF LAS ANIMAS, }
Territory of Colorado, } *ss:*

On this 14th day of ——, 1874, before me, Jesus Maria Garcia, a justice of the peace in and for precinct No. 1, in the county and Territory aforesaid, personally appeared George B. Hendricks and John Pittman (well known to me as residents of the precinct, county, & Territory aforesaid), who, being duly sworn according to law, deposeth and say that they reside in precinct No. 1, county of Las Animas, C. T.; that they are familiar with and have been upon the following-described land, more or less, during the last year; that said land has no indications of mineral upon it and is in their opinion purely agricultural, viz., the W. ½ S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, sec. 20, twp. 33 south, of range
77 68 west, in Las Animas county, C. T. The deponents further
swear they have noticed particularly the nature of the land aforesaid.

G. B. HENDRICKS.
JOHN PITTMAN.

Sworn to and subscribed before me, in precinct No. 1, Las Animas county, Territory of Colorado, this 14th day of March, 1874.

JESUS MARIA GARCIA,
Justice of the Peace.

TERRITORY OF COLORADO, }
County of Las Animas, } *ss:*

I hereby certify that Jesus Ma. Garcia & A. G. Stark, whose names are above subscribed, are justices of the peace of said county and Territory, duly elected and qualified and acting as such.

[L. S.] Witness my hand and official seal this 6th day of April, A. D. 1874.

JESUS MA. GARCIA, *Clerk*,
By RAFAEL CHACON, *Deputy.*

Proof Required under Homestead Acts, May 20th, 1862, *& June* 21, 1866.

We, John W. Terry and Eliza Sloan, do solemnly swear that we
have known Richard D. Russell for 2½ years last past; that he is
the head of a family, consisting of a wife and 4 children, & a
78 citizen of the United States; that he is an inhabitant of the
W ½ S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, sec.
20, twp. 33 south, range No. 68 west, and that no other person resided
upon the said land entitled to the right of homestead or pre-emption.
That the said Richard D. Russell entered upon and made settlement of said land on the 6th day of June, 1874, and has built a house thereon of adobe, 4 rooms, 36 feet square, with good doors, windows, roof, and floor, and has lived in the said house and made it his exclusive home from the 6th day of June, 1874, to the present time, and that he has, since the settlement, plowed, fenced, and cultivated about — acres of said land, and has made the following improvements thereon, to wit: About 3 acres under fence, ten acres plowed, about 60 acres in cultivation, an irrigating ditch, a stable, corrals, & other necessary outhouses; also a shingle mill in operation.

JOHN W. TERRY.
ELIZA SLOAN.

I, Keyes Danforth, reg., do hereby certify that the above affidavit was taken and subscribed before me this 5th day of September, 1876.

KEYES DANFORTH.

We certify that John W. Terry and Eliza Sloan, whose
79 names are subscribed to the foregoing affidavit, are persons
of respectability.

KEYES DANFORTH, *Register*.
M. H. FITCH, *Receiver*.

Final Affidavit Required of Homestead Claimants, Act of May 20, 1862.

I, Richard D. Russell, having made a homestead entry of the W. ½ of S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, section No. 20, in township No. 33 S., of range No. 68 W., subject to entry at Pueblo, Colorado, under the first section of the homestead act of June 8, 1872, do now apply to perfect my claim thereto by virtue of the first proviso to the second section of said act, and for the purpose do solemnly swear that I am the head of a *a* family and a citizen of the United States; that I have made actual settlement upon and have cultivated said land, having resided thereon since the 6th day of June, 1874, to the present time; that no part of said land has been alienated, but that I am the sole, *bona fide* owner as an actual settler, and that I will bear true allegiance to the Government of the United States.

RICHARD D. RUSSELL.

80 I, Keyes Danforth, register of the land office at Pueblo, Colorado, do hereby certify that the above affidavit was taken and subscribed before me this 5th day of September, A. D. 1876.

KEYES DANFORTH, *Reg.*

Final Receiver's Receipt.

No. 199. Application No. 547.

Act of June 8, 1872.

Homestead.

RECEIVER'S OFFICE, PUEBLO, COLO., *Sept. 5th*, 1876.

Received of Richard D. Russell the sum of six dollars — cents, being the balance of payment required by law for the entry of W. ½ of S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼ of sec. 20, in township 33 S., of range 68 W., containing 160 acres, under section 2291 of the Revised Statutes of the United States.

$6.00. M. H. FITCH, *Receiver.*

Non-mineral Affidavit.

COUNTY OF PUEBLO, *State of Colorado,* } *ss:*

Richard D. Russell, being duly sworn according to law,
81 deposes and says that he is the identical person who is an applicant for Government title to the W. ½ S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, sec. 20, T. 33 S., R. 68 W.; that he is well acquainted with the character of said described land and with each and every subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that — is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes.

RICHARD D. RUSSELL.

82 Subscribed and sworn to before me this 5th day of Sept., A. D. 1876; and I hereby certify that the foregoing affidavit was read to the said Richard D. Russell previous to his name being

subscribed thereto, and that deponent appears a respectable person, to whose affidavit full faith and credit should be given.

KEYES DANFORTH, *Register*.

Receiver's Receipt.

No. 547. Application No. 547.

Homestead.

RECEIVER'S OFFICE,
PUEBLO, COLORADO, *June 6th*, 1874.

Received of Richard D. Russell the sum of sixteen dollars — cents, being the amount of fee and compensation of register and receiver for the entry of W. ½ S. E. ¼ & N. E. ¼ of S. W. ¼ & S. W. ¼ of N. E. ¼, sec. 20, twp. 33 S., range 68 W., under the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain.

$16.00. CHAS. E. COOK, *Receiver*.

[Written across the face in red ink:] Act June 8, 1872.

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also
the date of entry. An abandonment of the land for more
83 than six months works a forfeiture of the claim. Further,
within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after six months, pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

The defendants also gave in evidence so much of a volume entitled "Reports of Committees of the House of Representatives made during the First Session of the Thirty-fifth Congress," which purports on its title page to have been printed by order of the House of Representatives, as relates to private land claim No. 15, being a copy of the report of said committee thereon, and certified copies of the papers in the claim of Charles Beaubien and Gau-lupe Miranda, filed in the office of the surveyor general of New Mexico, which certified copies were by him transmitted to Congress as claim No. 48 (afterwards changed to claim No. 15), which said report and papers are in words and figures as follows:

MAY 29, 1858.

Mr. Sandige, from the Committee on Private Land Claims,
84 submitted the following report:

The Committee on Private Land Claims, to whom was referred a large mass of documents relative to private land claims in the Territory of New Mexico, instruct me to make the following report:

It appears that a number of these claims were before the Committee on Public Lands of the last Congress, but from some cause no action was taken thereon by the committee nor by Congress. Those claims, with others since forwarded by the surveyor general of the Territory, have received the most careful attention your committee could give them, but, in justice to the committee, I must say this examination has been confined entirely to what seemed to be the principal papers in each case, having no time to scrutinize the evidence and the application as made by the surveyor general of the Spanish and Mexican laws and usages to each of them in detail; nor will it ever be in the power hereafter of any committee of this House to make such an examination as will be entirely satisfactory should these claims be allowed to accumulate before Congress

It is now ten years since the Territory of New Mexico was acquired and nearly four since the surveyor general of the
85 Territory was authorized to examine and report to us the
private land claims of its people; and although protected, as is supposed, by treaty in the enjoyment of their property, no man in the Territory, without some action of Congress, can say that his title, however acquired, would hold against any claimant who might purchase his lands from the Government.

Heretofore, and from the same cause which has embarrassed your committee, Congress has been compelled, in passing upon similar claims in Louisiana, Florida, and Missouri, to rely upon the report of the several boards of land commissioners and to confirm or reject, by whole classes, as recommended by the commissioners.

In view of such action, the people of New Mexico are not at all pleased to be compelled by law to submit their muniments of title to one man whose fitness for surveying is not supposed to qualify him particularly for discharging the duties of a judge, and yet whose opinions are expected to control, to a great extent, the final action of Congress upon their claims.

Because of this and that Congress, if it shall reserve the right to itself of passing judgment, must rely upon the report of an
86 examining commission, your committee believed it very im-
portant that such a board should consist of at least three persons, whose recommendations, whether to Congress or a judicial tribunal, would be entitled to and command more respect than your committee or the House can award to the report of the surveyor general alone.

But as Congress may not create such a board, and as it is due to the parties interested that the titles by which their lands are held should not be passed over to be settled by another generation, your committee have authorized me to report favorably (with one or two modifications) upon all the claims recommended for confirmation by the surveyor general, with the understanding that should the action of Congress conform to the views of the committee as to this board the claims may be finally determined under the law.

But for the gross injustice to the people of New Mexico of delay-

ing for an indefinite period action upon their claims, and the certainty that under existing arrangements Congress can never consider them under more favorable circumstances than at this time, your committee would not have been willing to report upon any of
these individual claims for the reason first stated, want of
87 time to examine fully, and the unknown quantity of land
claimed by most of the parties.

This last difficulty cannot be obviated without a survey of the lands, and that, it is presumed, will not be ordered by Congress in advance of a recgonition of title.

Of the fourteen claims proposed to be confirmed by the bill herewith reported the area of but five of them is either stated or estimated. They are for one league, four leagues, five leagues, seven thousand six hundred acres, and about twenty thousand acres.

Whether the other claims embrace a less or greater amount is not and cannot be made known from the documentary evidence of title forwarded by the surveyor general.

The grant in each case refers to some stream, hill, mountain top, valley, or other known natural object for boundary.

Schedule of Documents Accompanying Claim No. 48.

No. 1. Grant, original Spanish.
No. 2. Grant, translation.
No. 3. Notice.
No. 4. Testimony.
No. 5. Decision.
Claim No. 48, Charles Beaubien and Gaudalupe Miranda.

88 No. 1.

Grant, Original.

(By stipulation, No. 1 of said schedule, being the original Spanish of the grant, is omitted, it being admitted that No. 2 of said schedule is a correct translation thereof.)

No. 2.

Grant, Translation.

Seal third—two reals.

[L. S.] For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

MOST EXCELLENT SIR: The undersigned, Mexican citizens and residents of this place, in the most approved manner required by law state that of all the departments in the Republic, with the exception of the Californias, New Mexico is one of the most backward in intelligence, industry, manufactories, &c., and surely few others

present the natural advantages to be found therein, not only on account of its abundance of water, forests, wood, and useful timber, but also on account of the fertility of the soil, containing within its bosom rich and precious metals, which up to this time are useless for the want of enterprising men who will convert them to the advantage of other men, all of which productions of nature are susceptible of being used for the benefit of society in the department,
89 as well as in the entire Republic, if they were in the hands of individuals who would work and improve them. An old and true adage says that "what is the business of all is the business of none." While the fertile lands in New Mexico, where, without contradiction, nature has proven herself more generous, are not reduced to private property, where it will be improved, it will be of no benefit to the department, which abounds in idle people, who for want of occupation are a burden to the industrious portion of society, while with their labor they could contribute to its welfare and honestly comply with their obligations.

Idleness, the mother of vice, is the cause of the increase of crimes, which are daily being committed notwithstanding the severity of the laws and their rigid execution. The towns are overrun with thieves and murderers, who, by this means alone, desire to procure their subsistence. We think it a difficult task to reform the present generation, accustomed to idleness and hardened to vice; but the rising one, receiving new impressions, will easily be guided by the principles of a purer morality. The welfare of a nation consists in the possession of lands which produce all the necessaries of life without requiring those of other nations; and it
90 cannot be denied that New Mexico possesses this great advantage and only requires industrious hands to make it a happy residence.

This is the age of progress and the march of intellect, and they are so rapid that we may expect, at a day not far distant, that they will reach even us. Under the above conviction, we both request your excellency to be pleased to grant us a tract of land for the purpose of improving it, without injury to any third party, and raising sugar beets, which we believe will grow well and produce an abundant crop, and in time to establish manufactories of cotton and wool and raising stock of every description. The tract of land we petition for, to be divided equally between us, commences below the junction of the Rayado river with the Colorado and in a direct line towards the east to the first hills, and from there running parallel with said Colorado river, in a northerly direction, to opposite the point of the Una de Gato, following the same river along the same hills to continue to the east of said Una de Gato river to the summit of the table-land (mesa); from whence, turning northwest, to follow along said summit until it reaches the top of the mountain which divides the waters of the rivers running towards the east from those running towards the west, and from
91 thence following the line of said mountain in a southwardly direction until it intersects the first hill south of the Rayado river, and following the summit of said hill towards the east to the

place of beginning; for the reasons above expressed and being the heads of large families.

We humbly pray your excellency to take our joint petition under consideration and be pleased to grant us the land we petition for, by doing which we will receive grace and justice. We swear it is not done in malice; we protest good faith and whatever may be necessary, &c.

GAUDALUPE MIRANDA.
CARLOS BEAUBIEN.

Santa Fé, Jan. 8, 1841.

SANTA FÉ, *January* 11, 1841.

In view of the request of the petitioners, and what they state therein being apparent, this government, in conformity with law, has seen proper to grant and donate to the individuals subscribed the land therein expressed in order that they make the proper use of it which the law allows.

ARMIJO.

TAOS, *February* 12, 1843.

The undersigned, Mexican citizens and residents of this
92 department, appear before you in the most proper manner
provided by law and state that, having received from the government of the department a grant to the public land set forth in the accompanying plat, as will be seen by the superior decree attached to the margin, and having no title of possession which will secure our property and prevent any one from disturbing us in it, we request you to consider us as having presented ourselves and without delay execute the same, to be used according to our rights.

We therefore request you to comply with our request, justice being what we impetrate. We swear not to act with malice, and in whatever may be necessary, &c.

GAUDALUPE MIRANDA.
CARLOS BEAUBIEN.

Don Cornelio Vigil, justice of the peace.

TAOS, *February* 12, 1843.

Considered as presented and received, as far as the law allows.

I, the present justice, with those in my attendance and instrumental, will proceed to the place mentioned in the accompanying
documents and let the possession solicited be given to the
93 petitioners in order that it may be held by them, their heirs
and successors, according to law.

Citizen Cornelio Vigil, justice of the peace of the first demarcation of Taos, so provided, ordered, and signed, with those in attendance—I certify.

CORNELIO VIGIL.

Attending:
BUENAV. A. VALDEZ.
JUAN MANUEL LUCERO.

In the town of Taos, on the twenty-second day of February, one thousand eight hundred and forty-three, I, Citizen Cornelio Vigil, justice of the peace of this precinct, by virtue of what has been ordered in the foregoing decree, proceeded to the land referred to by Don Gaudalupe Miranda and Don Carlos Beaubien in the foregoing petition, and, being there with those in my attendance and instrumental witnesses which for that purpose were appointed, we proceeded to erect the mounds according as the land is described in the accompanying petition and which corresponds with the plat, to which I attach my rubric, and, commencing on the east of Red river, a mound was erected; from whence, following in a direct line in an easterly direction to the first hills, another mound was erected at the point thereof, and, continuing from south
94 to north on a line nearly parallel with Red river, a third mound was erected on the north side of the Chico Rica or Chicuaco mesa (table-land); thence turning towards the west and following along the side of the said table-land of the Chacuaco to the summit of the mountain, where the fourth mound was erected; from thence following along the summit of said main ridge from north to south to the Cuesta del Osha one hundred varas of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence, turning again to the east, towards Red river and following along the southern side of the table-lands of the Rayado and those of Gongalitos, on the eastern point of which the sixth mound was erected; from thence, following in a northerly direction, I again reached Red river on its western side, where the seventh and last mound was erected opposite to the first which was erected on the eastern side, and, being registered, I took them by the hand, walked with them, caused them to throw earth, pull up weeds, and show other evidence of possession, with which the act was concluded, the boundaries being determined without any claim whatsoever to the injury of any third party, as I, the aforesaid justice, in the name of the sovereignty of the nation (which may
95 God preserve), I gave to the aforesaid Don G. Miranda and Don C. Beaubien the perfect and personal possession asked for by them, in order that it may answer as a sufficient title for them, their children and successors, in which I will protect and defend them, and I direct that they be not deprived of said land without having been first heard and judgment rendered according to law.

In testimony whereof I signed with those in my attendance and instrumental (witness), who were Citizens Jose Maria Valdez, Pablo Jaramillo, and Pedro Valdez, who were present and residents of this precinct; to which I certify.

CORNELIO VIGIL.

Instrumental:
JOSE MARIA VALDEZ.
PABLO JARAMILLO.
PEDRO ANTONIO VALDEZ.
Attending:
BEUNAV'O VALDEZ.
JUAN MANUEL LUCERO.

[Seal fourth.]

Year one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

SANTA FÉ, *April* 13, 1844.

MOST EXCELLENT SIR: Citizen Charles Beaubien, native of Canada, but naturalized and resident of this department, in the juris-
96 diction of San Fernandez de Taos, for himself and in the
name of his associate, D. Guadalupe Miranda, native of the Mexican Republic, appears before you with due respect and in the most approved manner provided by law and convenient to him and states that, being about to undertake the cultivation of the lands which by virtue of a petition which we presented to the local government of this department on the 8th day of January, 1841, asking that the public lands at the place of "El Rincon del Rio Colorado" be granted to us, including the Rayado and Ponil rivers, &c., and as there was no injury done to any third party, our petition was acceded to, as may be seen by the decree issued on the 11th day of January, in the same year, by the most excellent governor and commandant general, Don Manuel Armigo, which is contained on the margin of our deeds. I have been prevented from carrying these projects into effect on account of the decree of the 27th February last, issued by your excellency, and which, through your secretary, was communicated to the prefecture of the first district, in order that paying attention to the petition addressed to your excellency by the curate Martinez and others in reference to a grant of the lands made to the citizen of the United States, Mr. Charles Bent, and that all use made of them be suspended
97 I have to state to your excellency in defense of those lands
which are in your possession, according to the titles thereto which are in our possession, that the petition addressed to your excellency by the curate Martinez and others is founded upon an erroneous principle, as the aforesaid Mr. Bent has not acquired any right to the said lands. It is therefore very strange that the curate Martinez and others pretend to involve our property, as it has no connection with that of that individual; therefore it is to be presumed or the necessary consequence must be that the curate Martinez and his associates do not know to whom those lands belong, nor their extent, as he states that a large number of leagues were granted when the grant does not exceed fifteen or eighteen, which will be seen by the accompanying judicial certificates.

They also state in the petition referred to, as I am informed, that those lands are recognized as commons where the stock of those towns is pastured. Here is another error when the same curate states that it is the place where buffaloes are hunted, very evidently making a palpable contradiction. He also states in his celebrated petition to the supreme government praying that the natives
98 be not allowed to hunt that most abundant game for fear that
the race would be extinguished on account of their unnecessary butchery at improper seasons, and it has removed so far that

it takes several months to reach it, and, being at so great a distance, can it be supposed that, travelling at a moderate rate, it can be reached in one or two days. Therefore I believe their claim to the lands granted or assigned to Mr. Charles Bent is a fraudulent one, and as the claim is made against that individual I do not see that we should be deprived of its productions, our object being to place it under cultivation; and not only does the suspension of labor on those lands injure us for the reason of having incurred heavy expenses, but also considerable number of families and industrious men who are willing and ready to settle upon those lands, and to whom we have given lands, a list of which individuals I accompany in order that your excellency seeing their number may determine what may be proper, and even if it were beneficial to the entire department that * * * (torn) * * *.

In order that your excellency may determine whether it is just or not, I accompany the documents which attest our title, requesting that they be returned. Therefore I pray your excellency
99 that we be allowed to remain in the free use of our property, by which I will receive grace and justice which I impetrate.

I swear that it is not done in malice, &c.

CHARLES BEAUBIEN.

SANTA ——, *April* 15, 1844.

This office, collecting all the precedents in reference to the matter, will refer these proceedings to the most excellent departmental assembly in order that it may give its opinion.

SENA.
JOSE J. ZUBIA.

MOST EXCELLENT SIR: In session of today this most excellent assembly, in consideration of your excellency's decree, has resolved upon the following opinion:

This most excellent assembly being informed of the petition of Mr. Charles Beaubien, in which he states for himself and in the name of his associate, Miranda, that in consequence of an order issued by the most excellent Governor Don Mariana Chavez the free use and benefit of their possession was forbidden them, and that this was done on account of a petition made by the priest Martinez and the chiefs of the Pueblo of Taos, falsely stating that this land was granted to Mr. Charles Bent and other foreigners, the afore-
100 said statement of the priest Martinez and associates being untrue, this assembly believing that the order of suspension having been based upon that false statement and in view of the documents which accredit the legitimate possession of Miranda & Beaubien and their desires that their colony shall increase in prosperity and industry, for which purpose he has presented a long list of persons to whom they have offered land for cultivation and who shall enjoy the same rights as the owners of the land; that the government having dictated the step for the sole object of ascertaining the truth, that the truth having been ascertained and the right of the party established, is of the opinion that the aforesaid

superior decree be declared null and void, and that Miranda and Beaubien be protected in their property as having been asked for and obtained according to law. This is our opinion, but your excellency may determine what you may deem most proper.

FELIPE SENA.

AUGUSTIN DURAN.
ANTONIO SENA.

DONÁCIANO VIGIL, *Secretary*.

101 SANTA FÉ, *April* 18, 1844.

In view of the foregoing opinion of the most excellent assembly of the justice of the cause of the petitioner for himself and his associate, Miranda, concerning the grant made to them by Governor General Manuel Armijo, and the illegal petition of the curate, Antonio Jose Martinez, and associates, in which they state that the land*s* of the Rincon del Rio Colorado was granted to foreigners, the order of the 27th of February issued by this government forbidding the free use of the land in question is repealed and Messrs. Beaubien and Miranda are fully authorized to establish their colony according to the offers made by them when they petitioned for the land which has been granted to them. Let this be transmitted to the prefect in order that he may issue his orders in accordance with this decree.

In absence of the secretary and by direction of his excellency the governor:

SENA.
DONACIANO VIGIL,
Acting Secretary.

102 RIO ARRIBA, *April* 18, 1844.

Let the foregoing proceedings, in which is to be found the superior decree of his excellency the governor of this department, dated the 18th instant, be transmitted to the party or parties interested in the land referred to, showing the documents to the justice nearest to the land, who is the proper one to order, that he may give ample authority to the petitioners to occupy the land which has been granted to them. The prefect, in compliance with said decree, informs the justice that they are forbidden from hindering the parties interested in said lands.

ARCHULETTA.

The undersigned certify, as far as the law allows and to the best of our knowledge and belief, that there is no objection made to the settlement of the place called Red river, which embraces the Rayado and Ponil rivers, &c., it being well known and certain that it has never been used as a pasture ground for cattle, and that for a long time it has not been used for hunting buffalos; on the contrary, the settlement of that place would be a benefit to the interior settle-
ments, affording them protection from the enemy in that
103 direction, occupying a great number of idlers who have no
occupation in the cultivation of the soil, and relieving this

vicinity from a large number of persons who crowd us. The endless difficulties we experience each year on account of the scarcity of water for irrigation would be avoided; but the greatest advantage to the entire department would be that in case of a war with the Navajo Indians the stock could be pastured during the entire year in the vicinity of these new settlements, and be protected by them. It is also certain that from here to the Arkansas river there are not more than six or seven days' journey traveling with packs at a moderate pace; from here to Rayado one and one-half days' journey; from the head of Red river to the Arkansas from three to four days.

In order that this certificate may have due force and effect we pray the justice of the peace of this first precinct to authorize this certificate and attach his judicial decree thereto, at Taos, the 14th day of March, 1844.

PABLO LUCERO.	JOSE MARIA VALDEZ.
BUENAVA. VALDEZ.	JOSE IGNACIO DE LUNA.
BLAS TRUFILLO.	TOMAS ROMERO.
GREGORIO LUCERO.	JUAN BENITO VALDEZ.
JOSE MIGUEL SANCHES.	JOSE GREGORIO MARTINEZ.
JOAN MANUEL LUCERO.	

104 It passed before me, and at the request of the subscriber- thereto by the authority which is conferred upon me by law I authorize the present certificate, the contents thereof being true; and in order that it may appear I sign with those in my attendance, to which I certify in Taos, on the 18th of March, 1844.

TOMAS LUCERO.

Attending:
RAFAEL CORDOVA.
JUAN JOSE GONZALES.

Duplicate of the above certificate on the 16th March, 1844, signed by Miguel Antonio Vigil, Antonio Jose Mondragon, Miguel Masce, renas, Manuel Fernandez, Rumaldo Vargas, Jose Ignacio Gonzalles, Jose Manuel Martinez, Pabelo Vargas, Juan de Jesus Medina-Beunav. Lobato.

At the request of the above signed, personally present, I authorize the present certificate, and I know the contents thereof to be true; and, in order that it so may appear, I signed with those in my attendance; to which I certify.

JUAN ANTONIO LOBATO.

Attending:
JUAN DE LOS REYES ROMERO.
JOSE MATIAS CASIAS.

S. Fernandez de Taos, March 16, 1844.

105 SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *Sept. 25th*, 1857.

The foregoing is a correct translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *Sept.* 25, 1857.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

No. 3.

Notice.

Your petitioners, Charles Beaubien and Guadalupe Miranda, original and present claimants of a certain tract of land hereinafter described, would respectfully state that heretofore, to wit, in the year of our Lord one thousand eight hundred and forty-one, Manuel Armijo, then governor of said Territory under the Mexican Republic, by virtue of his authority as such governor and of the consent and approval of the departmental assembly of said Territory, did grant and concede to your said petitioners a full
106 and complete right and title to a certain tract of land situated in the county of Taos, in the northeastern part of said Territory, and of which legal possession was judicially given to your petitioners according to the laws and customs of the Mexican Republic on the twenty-second day of February, A. D. 1843 (see exhibit of grant in this case marked A), and bounded and described as follows: Commencing on the east of Red river, a mound was erected, from whence, following in a direct line in an easterly direction, to the first hills another monument was erected at the point thereof, and continuing from south to north on a line nearly parallel with Red river a mound was erected on the north side of the Chacuaco mesa (table-land); thence running towards the west and following along the side of the said table-land of the Chacuaco to the summit of the mountains, where the fourth mound was erected; from thence, following along the summit of the main ridge from north to south, to the "Cuesta del Osha," one hundred varas north of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence turning again to the east, towards Red river, and following along the southern side of the table-lands of
107 Rayado and those of Gonzalitos, on the eastern point of which the sixth mound was erected; from thence following in a northerly direction again to Red river, on its western side, where the seventh and last mound was erected, opposite to the first, which was erected on the eastern side of said river.

The manner and form in which the possession of said tract was given to your petitioners will fully appear by the documentary evidence herewith filed, marked (A), and prayed to be made a part of this petition.

Your petitioners further state that they have cultivated and improved portions of said land for the last twelve years, whereby it has become of great value, and that they are still cultivating and improving the same by the cultivation of land and erection of houses.

That said tract has never been surveyed and they cannot therefore furnish any certain estimate of its contents; that a small portion only is fit for cultivation and the balance, owing to its mountainous character and scarcity of water, being useless for any other purpose than that of pasturage.

108 That they do not know of any person or persons contesting or intending to contest their right or title to the said lands or any part of them; and your petitioners therefore pray that said grant may be confirmed to them under the laws of the United States, and will ever pray, &c.

HOUGHTON, WHEATON & SMITH,
For Petitioners.

Honorable William Pelham, surveyor general of the Territory of New Mexico.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *Sept.* 25, 1857.

The foregoing is a true copy of the original on file in this office.

WILLIAM PELHAM,
Surveyor General.

No. 4.

Testimony.

CHRISTOPHER CARSON sworn:

Question. Have you any interest in this claim?

Answer. I have not.

Question. How long have you known the Rayado grant, and do you know the principal points in it?

Answer. I have known it since 1845, and know its principal points well.

Question. When was the first settlement made on that grant, and where was it made?

109 Answer. I passed there in 1844 with Lucien B. Maxwell and saw large fields of corn, beans, pumpkins, &c., and a great deal of land cultivated and several houses built on the Big Cimaron, one of the small streams of the grant.

Question. When did you see the next settlement there?

Answer. I went there and settled myself with Richard Owens and others in 1845. We built houses, and I alone had fifteen acres under cultivation. I left in August of the same year for California.

Question. Do you know what became of the settlement?

Answer. I believe it has been occupied from 1844 up to this time every year.

Question. What other settlement is there on the grant?

Answer. Lucien B. Maxwell settled on the Rayado, a stream within the grant, in 1849, and has been there up to this time and is there now.

Question. What is the extent of improvements on the grant?

Answer. There are about 200 acres of land under cultivation, about $15,000 in buildings, and about 15,000 head of stock on the grant.

Question. Did you make this first settlement with the knowledge and consent of St. Vrain and Vigil?

110 Answer. I did. I knew they had a grant.

Question. What relation is Lucien B. Maxwell to Charles Beaubien?

Answer. His son-in-law. He holds the land under the right of Beaubien.

C. CARSON.

Subscribed and sworn to before me this 28th of July, 1857.

WM. PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *September* 28, 1857.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

AUGUSTIN DURAN sworn:

Question. Have you any interest in this claim?

Answer. I have none.

Question. Did you know Manuel Armijo, and what office did he hold in 1841 & 1843?

Answer. I did. In 1841 he was civil and military governor. In 1843 he still held the same office.

Question. Have you ever seen him write, and do you know his signature?

Answer. I have, and do know his signature and handwrit-
111 ing. His signature on the document shown me is genuine.

Question. Who was the president and who were members of the departmental assembly in 1844?

Answer. I was a member, and also Jose Chavez; Felipe Sena was the president; Donaciana Vigil was secretary *pro tempore* in the absence of the secretary elect.

Question. Do you know the signatures of Felipe Sena, Antonio Sena, Donaciana Vigil, and Augustin Duran?

Answer. I know them. Their signatures on the document shown me are genuine; the signature of Juan Andres Archuletta is also genuine.

AUGUSTIN DURAN.

Sworn to and subscribed before me this 8th day of August, 1857.

WM. PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *September* 25, 1857.

The foregoing is *is* a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

FRANCISCO ORTEGA sworn:

Question. Have you any intertest in this claim?

Answer. I have none.

112 Question. Do you know the position of the grant of Beaubien and Miranda and known as the Rayado grant?

Answer. I do. I was there the first year it was settled.

Question. Where was the first settlement made on this grant and who made it?

Answer. On the Cimmaron river. My uncle, Corneliuo Vigil, and Carlos Beaubien were the first settlers. They went there in 1843.

Question. Did you go to the Cimmaron for these men?

Answer. I went there for my uncle.

Question. Did your uncle go there at the request of Don Carlos Beaubien?

Answer. I believe he did.

Question. When did they leave there and for what cause?

Answer. They have not left it. It has been in the occupation of his hands from 1843 up to this time.

Question. Do you know of a settlement on this grant called Rayado?

Answer. I do.

Question. How many houses are in the settlement and how much land is under cultivation?

Answer. There are many houses there now; there is a great deal under cultivation, and many heads of cattle are pastured there.

113 Question. Who was the first settler at Rayado?

Answer. Lucien B. Maxwell, a son-in-law of Charles Beaubien; it was settled after Cimmaron, about one year after the American troops came to the Territory.

JOSE FRA'CO ORTEGA.

Sworn and subscribed to before me this 12th day of August, 1857.

DAVID V. WHITING,
Notary Public.

SURVEY- GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *September* 25, 1857.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

No. 5.

Decision.

Surveyor General's Office,
Santa Fé, New Mexico, *September* 18, 1857.

This case was filed on the 23d February, 1857, and set for trial on the 28th of July.

On the 8th day of January, 1841, Charles Beaubien and Gaudalupe Miranda petitioned Manuel Armijo, the civil and military governor of New Mexico, for a grant of land in the now county of Taos, commencing below the junction of the Rayado and Red
114 rivers, from thence in a direct line to the east to the first
hills; from thence, following the course of Red river in a northerly direction, to the junction of the Una de Gato with Red river; from whence, following along said hills to the east of the Una de Gato river, to the summit of the table-land (mesa); from whence, turning northwest, following said summit, to the summit of the mountain which separates the waters of the rivers which run toward the east from those which run to the west; from thence, following the summit of said mountain in a southerly direction, to the first hills east of the Rayado river; from thence, following along the brow of said hill, to the place of beginning.

On the 11th day of January, 1841, Manuel Armijo, the governor aforesaid, "in conformity with the laws," granted the land to the petitioners to make such use of it as they saw proper.

On the 22nd day of February, 1843, the parties were placed in possession of the land granted by Cornelio Vigil, a justice of the peace of the first precinct of Taos, *who* with all the solemnities required by law and custom.

On the 27th of February, 1844, this grant was suspended by a subsequent governor upon complaint made by one priest,
115 Martinez of Taos, for several reasons contained in the state-
ment made by Beaubien on the 13th of April, 1844, to Armijo, who in the meanwhile had been reappointed to the office of civil and military governor of the department.

On the 18th day of April Armijo referred the statements of Beaubien, as well as the original petition, grant, and judicial possession, to the departmental assembly for its action in the premises. This body reversed the order of February 27 and approved the grant made by Armijo in 1841, which is referred to the prefect of the first district by the governor to issue his directions to cause the parties to be reinstated in their possession, which order was issued by the prefect on the 18th of April, 1844.

The papers acted upon in this case are the originals, duly authenticated by the testimony of competent witnesses.

The grant having been confirmed by the departmental assembly and been in the constant occupation of the grantees from the date of the grant until the present time, as is proven by the testimony of witnesses, it is the opinion of this office that it is a good and valid grant according to the laws and customs of the government of the

Republic of Mexico and the decisions of the Supreme Court
116 of the United States as well as the treaty of Gaudalupe Hidalgo of the 2nd of February, 1848, and is therefore confirmed to Charles Beaubien and Gaudalupe Miranda and is transmitted for the action of Congress in the premises.

WM. PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *September* 25, 1857.

The foregoing is a correct copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

Defendants also offerred in evidence a certified transcript of the opinion of the surveyor general of New Mexico and of a letter from William Pelham, surveyor general of New Mexico, to the Commissioner of the General Land Office, relating to numbering of claims; which said transcript is in words and figures as follows:

D. (4–207.) J. R. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April* 1*st*, 1890.

I, Lewis Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of the transcript of the opinion of the United States surveyor general for New Mexico in the
117 Beaubien and Miranda grant, dated September 17, 1857, copy of an original letter, with an abstract from a schedule, dated Jan'y 12, 1858, are true and literal exemplifications from the records and files of this office.

[L. S.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

Claim No. 48.

Charles Beaubien and Gaudalupe Miranda.

This case was filed on the 23d February, 1857, and set for trial on the 28th July.

On the 8th day of January, 1841, Charles Beaubien and Gaudalupe Miranda petitioned Manuel Armijo, the civil and military governor of New Mexico, for a grant of land in the now county of Taos, commencing below the junction of the Rayado and Red rivers, from thence in a direct line to the east to the first hills; from thence, following the course of the Red river in a northerly direc-

tion, to the junction of the Una de Gato with Red river; from
whence, following along said hills to the east of the Una de
118 Gato river, to the summit of the table-land (mesa); from
whence, turning northwest, following said summit, to the summit of the mountain which seperates the waters of the rivers which run towards the east from those which run to the west; from thence, following the summit of said mountain in a southerly direction, to the first hill east of the Rayado river; from thence, following along the brow of said hill, to the place of beginning.

On the 11th day of January, 1841, Manuel Armijo, the governor aforesaid, "in conformity to the laws," granted the land to the petitioners to make such use of it as they saw proper.

On the 22nd day of February, 1843, the parties were placed in possession of the land granted by Cornelio Vigil, a justice of the peace of the first precinct of Taos, with all the solemnities required by law and custom.

On the 27th of February, 1844, this grant was suspended by a subsequent governor upon complaint made by one priest, Martinez, of Taos, for several reasons contained in the statment made by Beaubien on the 13th of April, 1844, to Armijo, who in the meanwhile had been reappointed to the office of civil and military governor of the department.

119 On the 18th day of April Armijo referred the statement of
Beaubien, as well as the original petition for the grant and judicial possession, to the departmental assembly for its action in the premises.

This body reversed the order of February 27th and approved the grant made by Armijo in 1841, which is referred to the prefect of the first district by the governor to issue his directions to cause the parties to be reinstated in their possession, which order was issued by the prefect on the 15th April, 1844.

The papers acted upon in this case are the originals, duly authenticated by the testimony of competent witnesses.

The grant having been confirmed by the departmental assembly and been in the constant occupation of the grantees from the date of the grant until the present time, as is proven by the testimony of witnesses, it is the opinion of this office that it is a good and valid grant according to the laws and customs of the government of the Republic of Mexico and the decisions of the Supreme Court of the United States, as well as the treaty of Gaudalupe Hidaldo, of the 2nd February, 1848, and is thereupon confirmed to Charles Beaubien and Gaudalupe Miranda, and is transmitted for the action of Congress in the premises.

WILLIAM PELHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, September 17th, 1857.

120 SURVEYOR GENERAL'S OFFICE, SANTA FÉ,
NEW MEXICO, *September 25th*, 1857.

The foregoing is a correct copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE, SANTA FÉ,
NEW MEXICO, *January* 12, 1858.

SIR: In transmitting claims which have been approved for their final confirmation by Congress it was the intention of this office that the pueblo grants should be numbered from No. 1 up, and that the citizen private land claims should be numbered as they were filed in this office and entered on the docket; hence some confusion has arisen in the enumeration of the several claims transmitted. Upon reflection and after the receipt of your letter of November 19th, 1857, I have thought it advisable to change the system heretofore adopted by numbering the approved claims of citizens from No. 1 up, and that the pueblo grants be distinguished by alphabetical signs, 121 commencing with the letter A. As there are but 21 pueblos in all, there will be no danger of a repetition of the letters.

I herewith enclose a schedule of the pueblo grants and private land claims approved and transmitted, lettered and numbered as above stated, with the request that the alteration be made on the claims before their final confirmation by Congress.

Very respectfully, your ob'd't serv't,

WM. PELHAM,
Survey- General.

Thomas A. Hendricks, Esq., Commissioner of the General Land Office, Washington city, D. C.

122 Schedule of private land claims examined and approved by the surveyor general of New Mexico and transmitted for the final action of Congress in the premises.

* * * * * * *

15. { Charles Beaubien, Gaudalupe Miranda, } Taos county.

* * * * * * *

WM. PELHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, January 12, 1858.

The defendant- also introduced in evidence a certified copy of the original diseno or map of the claim of said Beaubien and Miranda as filed in the recorder's office of the county of Colfax, New Mexico, said map being in lines, words, and figures as follows:

(Here follows map marked p. 123.)

124 ALBERT W. ARCHIBALD, being produced, sworn, and examined by Mr. DALY in behalf of the defendants, testified as follows:

Question. Please state your name.

Answer. Albert W. Archibald.

Q. Mr. Archibald, are you acquainted with the premises known as the Russell ranch?

A. I am.

Q. Will you please state where these premises are located?

A. On the north side of the Middle fork of the Purgatoire river, in section twenty (20), township thirty-three (33) south, range sixty-eight (68) west.

Q. Were you acquainted with Richard D. Russell?

A. I was; had known — since about 1872 until the time of his death.

Q. Do you know when he entered upon these lands?

A. About the year 1872. I do not remember positively whether it was in the fall of 1871 or the spring of 1872.

Q. How long did he remain in possession of these lands?

A. From about the year 1872 up to the time of his death in 1888.

Q. Who has been in possession of the land?

125 Ans. His widow has — living on the land since with her family.

Q. What is your business, Mr. Archibald?

A. I am practicing law now exclusively. I have heretofore done considerable surveying.

Q. Are you a practical surveyor?

A. Yes, sir.

Q. Where do you reside?

A. In Trinidad, Colorado.

Q. Where is that in reference to the northern boundary of the Maxwell grant as patented?

A. About five miles, approximately, north of the northern boundary of the grant as patented.

Q. How long have you resided in that section of the country?

A. Since March, 1861.

Q. Where did you reside prior to that time?

A. I resided in different parts of Colorado and in New Mexico, near Fort Union, for about one year and a half between 1858 and 1861.

Q. Are you acquainted with the location of the northern boundary of the Maxwell grant as patented?

A. I am.

Q. Are you acquainted with that portion of the grant as patented which lies in the State of Colorado and the general topography of the country thereabouts?

126 A. I am. I retraced the northern boundary of it and am familiar with all that portion of it lying in Colorado.

Q. What is the general topography of the country along which the northern boundary of the grant as patented runs?

Mr. Gast: What is the purpose of this?

Mr. Daly: The original description of the grant as it has been introduced is as follows:

The Court: You wish to show that the survey was not made according to the original description?

Mr. Daly: Yes, your honor.

The Court: I do not think we can go into that. If I understand the matter, after the entry was made they made a survey which includes the territory where this tract in controversy is. The patent goes back by relation to the Mexican government, and it must be conclusively presumed that the boundary as described in the patent is the same as the boundary in the grant as originally made.

The defendants then offered to prove by said witness and several others who were practical surveyors and acquainted with the topography of the country along and within the northern
127 boundary of the Maxwell grant and in the neighborhood of
the premises in question that there is no mesa land in that country, and to further prove that the original boundary of the grant to Beaubien and Miranda, as described in the original grant to them by the government of Mexico and as described by the alcalde in fixing the boundaries of the grant, and also as described in the diseno or map introduced in evidence, does not include the premises in question, but that the northern boundary of said grant, if run as described in the original grant or in the writ of possession issued by the alcalde or as shown on said map, would fall south of the premises in question.

But the court refused to admit the evidence or any part thereof; to which ruling and decision of the court in refusing to admit said evidence the defendants, by their counsel, then and there excepted.

The foregoing was all the evidence offered or introduced on the trial of this cause.

And thereupon the defendants, by their counsel, then and there asked the court to give to the jury the following instructions, to wit:

128 1. If the jury believe from the evidence that during or
prior to the year 1874 the lands in controversy were surveyed by the United States and opened to settlement, and that Richard D. Russell entered said lands as a homestead under the laws of the United States and during the year 1876 made final proof and payment therefor and did everything necessary on his part to entitle him to a patent to said land, and that the final receiver's receipt was then issued to him, and if the jury further believe from the evidence that the patent under which the plaintiff claims title was not issued nor the survey therein mentioned made by the United States until subsequent to the issuance to said Russell of said final receiver's receipt, then the recitals in said patent are not evidence as against the defendants of the facts therein recited and no presumption arises from said patent that the survey referred to therein cor-

rectly describes the boundaries of the original grant to Beaubien and Miranda.

2. If the jury believe from the evidence that the land in controversy was surveyed by the United States and entered as a homestead by Richard D. Russell, and final proof and payment therefor made by him and everything done by him necessary to entitle a
129 pre-emptor to a patent to lands so entered, and that the final receiver's receipt was issued to him, then the burthen is upon the plaintiff to establish by preponderance of the evidence a title to the said premises acquired by the said plaintiff or some party under whom it claims prior to the date of said receiver's final receipt.

3. Where a grant of land by the Mexican government has been confirmed by Congress the confirmation relates to the lands as described in the original grant and not as described in the writ of possession issued by the Mexican authorities, when the description in said writ differs from the description in the grant, and in surveying such claim for the purpose of patenting the same to the grantee the description as given in the original grant should be followed.

4. If from the evidence in the case the jury are unable to determine whether the premises in question are included within the boundaries of the alleged grant by the Mexican authorities to Beaubien and Miranda, then they must find for the defendants, provided they further believe from the evidence that said premises were surveyed by the United States, entered by Richard D. Russell
130 as a homestead, and final proof and payment made by him, and that the final receiver's receipt therefor issued to him prior to the date of the survey described in the plaintiff's patent.

5. If the jury find from the evidence that the premises in controversy are not included within the boundary of the alleged original grant by the Mexican authorities to Beaubien and Miranda, then they must find for the defendants, provided they further find from the evidence that Richard D. Russell prior to the date of the plaintiff's patent and to the date of the survey therein described made such a valid homestead entry therein as would entitle him to a patent therefor in case said premises were public lands subject to such entry.

6. If the jury are unable from the evidence to locate the boundaries of the plaintiff's claim as they existed at the time the final receiver's receipt which has been introduced in evidence was issued to Richard D. Russell, then they must find for the defendants.

But the court refused to give said instructions to the jury; to which decision of the court in refusing to give the same and
131 each of them to the jury the defendants, by their counsel, then and there excepted.

And thereupon the court instructed the jury to find for the plaintiff.

To the giving of which instruction the defendants, by their counsel, then and there excepted.

And thereupon the jury rendered a verdict against the defendants; whereupon the defendants, by their counsel, then and there moved the court to set aside the verdict as rendered and to grant a new trial in this cause, and filed the following reasons, in writing, for their motion, to wit:

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo, October Term, 1890.

THE MAXWELL LAND GRANT COMPANY, Plaintiff,
vs.
MARION RUSSELL *et al.*, Defendants.

Now comes the said defendants and move the court to set aside the verdict of the jury rendered in said cause and to grant a new trial therein, and in support of said motion show to the court as follows:

1. The court admitted improper evidence over defendants' objections. 132
2. The court refused to admit proper evidence offered by defendants.
3. The court improperly overruled defendants' motion to dismiss said cause made at the close of plaintiff's testimony.
4. The verdict should have been for the defendants, because there was no evidence showing that the premises in controversy were a part of the plaintiff's alleged grant as described in the amended complaint.
5. The court improperly refused to admit evidence offered by the defendants to show that the premises in controversy were no part of the original grant to Beaubien and Miranda, under which plaintiff claims title, as said grant was bounded at the time the final receiver's receipt issued to Richard D. Russell.
6. The court improperly refused to give to the jury the instructions requested by the defendants.
7. The court improperly instructed the jury to find for the plaintiff.
8. The verdict is against the weight of the evidence.
9. The verdict is contrary to the law and the evidence in the case. 133
10. The verdict is improper, in that it finds that the plaintiff is the owner of the fee-simple title to the whole of said premises.

GEO. R. DALY,
Att'y for Defendants.
J. K. RUSSELL,
Next Friend.

But the court denied the motion and gave judgment on the verdict against the defendants; to which decision of the court in denying such motion the defendants, by their counsel, then and there excepted.

And thereupon the defendants filed in said cause a certain affidavit as to the value of said premises; which said affidavit is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } *ss:*
State of Colorado, }

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo.

THE MAXWELL LAND GRANT COMPANY, Plaintiff, }
vs. } Affidavit.
MARION RUSSELL *et al.*, Defendants. }

134 Alfred F. Tremain, being duly sworn, on oath says that he is acquainted with the premises described in the amended complaint in the above-entitled cause as the Russell ranch and with the value thereof, and that said premises exceed in value the sum of five thousand dollars. Affiant further says that the premises herein referred to are the same premises possession of which is sought to be recovered in the above cause.

ALFRED F. TREMAIN.

Subscribed and sworn to before me this 10th day of October, A. D. 1890.

A. V. BRADFORD,
[L. S.] *Notary Public.*

(My commission expires April 29th, 1894.)

And forasmuch as the matters above set forth do not fully appear of record, the defendants tender this their bill of exceptions and pray that the same may be signed by the judge of this court pursuant to the statute in such case made and provided, which is done accordingly this 3d day of December, 1890.

MOSES HALLETT, *Dist. Judge.* [SEAL.]

O K.
CHAS. E. GAST,
Att'y for Def't.

135 And afterwards and, to wit, upon the aforesaid 9th day of December, A. D. 1890, the defendants filed in said court a certain bond; which said bond is in words and figures following, to wit:

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court of the United States for the District of Colorado, Sitting at Pueblo.

MARION RUSSELL, KATE HARVEY, GEORGE RUSSELL, ELLA Russell, Halbert Russell, and Charles Russell, Heirs of Richard D. Russell, Deceased, Plaintiffs in Error,
against
THE MAXWELL LAND GRANT COMPANY, Defendant in Error.

Know all men by these presents that we, Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell, of the county of Las Animas and State of Colorado, as principals, and —— ——, of the same place, as sureties, are held and firmly bound unto the above-named Maxwell Land Grant Company in the sum of one thousand (1,000) dollars, to be paid to the said Maxwell Land Grant Company or its successors; for the payment of which, well and truly to be made, we bind ourselves
136 and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventeenth day of October, in the year of our Lord one thousand eight hundred and ninety.

Whereas the above-named Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell, heirs of Richard D. Russell, deceased, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the said district of Colorado:

Now, therefore, the condition of this obligation is such that if the above-named Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell, heirs of Richard D. Russell, deceased, shall prosecute said writ of error to effect and shall answer all damages and costs if they fail to make good their plea, then this obligation to be void; otherwise the same shall be and remain *if* full force and virtue.

MARION RUSSELL, [SEAL.]
KATE HARVEY, [SEAL.]
GEORGE RUSSELL, [SEAL.]
ELLA RUSSELL, [SEAL.]
HALBERT RUSSELL, [SEAL.]
CHARLES RUSSELL, [SEAL.]
By J. K. RUSSELL, [SEAL.]
Next Friend.
OLOF THOMASON. [SEAL.]
D. D. FINCH. [SEAL.]

137 Approved Dec. 3, 1890.

MOSES HALLETT, *Dist. Judge.*

Iconsent to the approval of this bond.

CHAS. E. GAST,
Att'y for Def't.

And upon the aforesaid 9th day of December, A. D. 1890, a writ of error was issued to the circuit court of the United States for the district of Colorado; which said writ of error is hereto attached.

And upon the aforesaid 9th day of December, A. D. 1890, a citation to defendant in error was issued — of said circuit court in words and figures following to wit:

Citation, U. S. Circuit Court.

THE UNITED STATES OF AMERICA,
District of Colorado.

The United States of America to the Maxwell Land Grant Company, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, October term, 1890, to be holden at Washington, D. C., pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, sitting at Pueblo, wherein Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert 138 Russell, and Charles Russell, heirs of Richard D. Russell, deceased, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

L. S. U. S. Circuit Court.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 9th day of December, in the year of our Lord one thousand eight hundred and ninety.

WM. A. WILLARD, *Clerk*,
By MARK G. BRADFORD,
Deputy Clerk.

Proof of Service.

JAN. 24, '91.

Service of this citation accepted this day.

CHAS. E. GAST,
Attorney for Maxwell Land Grant Company.

139 UNITED STATES OF AMERICA,
District of Colorado, } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Pueblo, do hereby certify that the above and foregoing is a full, true, and complete transcript and copy of all proceeding- had and all papers filed in said court appertaining to or forming part of the record in a cause lately pending in said court, wherein The Maxwell Land Grant Company was plaintiff and Marion Russell *et als.* were defendants, as fully as the same now appears of record in said court.

Seal United States Circuit Court, District of Colorado.

In testimony whereof I hereunto set my hand and the seal of said court, hereunto affixed, at my office, in the city of Pueblo, in said district, this ninth day of February, A. D. 1891.

WILLIAM A. WILLARD, *Clerk*,
By MARK G. BRADFORD,
Deputy Clerk.

140 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States of America.

MARION RUSSELL, KATE HARVEY, GEORGE Russell, Ella Russell, Halbert Russell, and Charles Russell *vs.* THE MAXWELL LAND GRANT COMPANY.	Assignment of Errors.

Afterwards, to wit, on the second Monday of October, in the year of our Lord eighteen hundred and ninety-one, at the October term for eighteen hundred and ninety-one of the Supreme Court of the United States, at the Capitol, in the city of Washington and District of Columbia, came the said Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell, by Ira W. Buell, their attorney, and say that in the record and proceedings in the above-entitled cause there is manifest error, in this, to wit:

I.

The court erred in refusing to admit evidence offered by defendants to show that the premises in controversy are no part of the original grant from the Mexican government to Beaubien and Miranda, upon which the plaintiff's title is based and upon which its said patent issued.

II.

The court erred in not instructing the jury to find for the defendants.

141 III.

The court erred in instructing the jury to find for the plaintiff.

IV.

The court erred in refusing to give to the jury the instructions asked by the defendants.

V.

The court erred in not setting aside the verdict as contrary to the law and evidence in the case.

VI.

The court erred in overruling the defendants' motion for a new trial.

Wherefore the said Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell pray that the judgment of the said circuit court of the United States for the district of Colorado be reversed and the said circuit court of the United States for the district of Colorado be ordered to enter judgment in favor of the said Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell.

IRA W. BUELL,
Attorney for Plaintiffs in Error, 78 *La Salle St., Chicago, Ills.*

142 *Citation, U. S. Circuit Court.*

THE UNITED STATES OF AMERICA,
District of Colorado.

The United States of America to the Maxwell Land Grant Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, October term, A. D. 1891, to be holden at Washington, D. C., on the 12th day of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, sitting at Pueblo, wherein Marion Russell, Kate Harvey, George Russell, Ella Russell, Halbert Russell, and Charles Russell, heirs-at-law of Richard D. Russell, deceased, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the circuit court of the United States for the district of Colorado, this ninth day of December, in the year of our Lord one thousand eight hundred and ninety.

MOSES B. HALLETT, *Judge.*

143 [Endorsed:] Original. Gen. No., 150. Circuit court of the United States, district of Colorado. Marion Russell *et al.*, plaintiffs in error, *vs.* The Maxwell Land Grant Company, defendant in error. Citation. Filed in —— court of the U. S. this — day of ——, A. D. 18—. —— ——, clerk, by —— ——, deputy clerk. Geo. R. Daley, attorney for plaintiffs in error.

Jan. 24, '91.—Service of this citation accepted this day.

CHAS E. GAST,
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Endorsed on cover: Case No. 14,893. Colorado C. C. U. S. Term No., 321. Marion Russell *et al.*, plaintiffs in error, *vs.* The Maxwell Land Grant Company. Filed October 12, 1891.

(14,893.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1894.

No. 321.

MARION RUSSELL ET AL.,
Plaintiffs in Error.
vs.
THE MAXWELL LAND GRANT COMPANY,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of Colorado.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This writ of error is prosecuted from the judgment of the Circuit court for the District of Colorado, in an action of ejectment brought on May 19, 1888, by the Maxwell Land Grant Company against Richard D. Russell. During the progress of the litigation in the court below the defendant died and his widow and heirs were substituted as defendants. The plaintiff in the court below claimed title under what is known as the Maxwell Land Grant, for which the patent issued from the government of the United States to Charles Beaubien and Guadalupe

Miranda, on May 19, 1879, based upon a grant by the Mexican governor of New Mexico on January 11, 1841, and confirmed by Congress on June 21, 1860.

In 1871 the premises in question were surveyed under the direction of the United States surveyor general of Colorado, and as so surveyed, are known and described as the West half of the South East quarter, the North East quarter of the South West quarter, and the South West quarter, of the North East quarter, of Section 20, township thirty-three (33) south, range sixty-eight (68) west. In 1872 Richard D. Russell, under whom plaintiffs in error claim, entered upon the premises and duly pre-empted them under the Homestead act, and the final receiver's receipt was issued to him on September 5, 1876, being three years before the patent on the grant issued to the plaintiff. The premises in question fall just within the northern boundary of the survey of the surveyor general of New Mexico attached to plaintiff's patent, but it was contended upon the part of the defendants that the premises did not fall within the limits of the original Mexican grant upon which the patent issued; and that as the United States had parted with all its rights in the premises to the defendants prior to the issuance of the patent to the plaintiff, the officers of the general land office who surveyed the grant had no power or authority to bind the defendants by including their lands in a patent to the plaintiff. That the rights of the parties were fixed at the time the plaintiff received his final receipt, and if the land to which he obtained the full equitable title from the government by that receipt was not then included within the limits of the Mexican grant, it could not by an act of the officers of the United States be afterwards brought within those limits.

The question of the validity of the Maxwell Land Grant has been the subject of much litigation in the courts, and in the Maxwell Land Grant case, 121 U. S., 325, this court decided that the grant, having been confirmed by Congress, was valid to its full extent; that if the grant as originally made, was invalid, the United States owned the property and might dispose of it by electing to treat the grant as valid, holding, in effect, that in such case the confirmation operated as a grant *de novo*. From that decision we have no desire to in any manner dissent, and it is not our intention to attack the validity of the grant as confirmed. But as to the limits of the grant, and the correctness of the survey under which it was patented, that decision is conclusive only upon the United States and parties claiming under rights acquired from the United States subsequent to the issuance of the patent.

The plaintiff offered in evidence upon the trial the patent to Charles Beaubien and Guadelupe Miranda (Print. Rec., 12), and it was admitted by the defendants that the premises in question fell within the bounds of the survey attached to the patent as descriptive of the lands granted, and that the plaintiff acquired by mesne conveyance whatever title passed to Beaubien and Miranda by said patent, not admitting, however, that they acquired any title thereby, (Print. Rec., 26.)

The defendants offered in evidence on the trial a plat of Township thirty-three (33) South, Range sixty-eight (68) West, made in accordance with a survey thereof under the direction of the Surveyor General of Colorado (Print. Rec., 26), also the field notes of said survey, relating to Section twenty (20) of said Township and certified transcripts of the papers relating to the homestead entry of Richard D. Russell for the premises in question (Pr. Rec., 29), including the final receiver's receipt, issued to him on September 5, 1876. (Pr. Rec., 36.) Defendants also offered in evidence the papers relating to the claim of Beaubien and Miranda, filed in the office of the surveyor-general of New Mexico, and afterwards transmitted to Congress, being all the papers relating to the Mexican grant upon which the patent issued, and containing a description of the grant both in the petition and the certificate of the alcalde or justice of the peace who gave juridical possession to the grantees. (Pr. Rec., 39.) The defendants also offered in evidence a certified copy of the original diseno, or map of the claim referred to in the certificate of the justice as defining the boundaries of the grant. (Pr. Rec., 54.)

The defendants also offered to prove by witnesses that the premises in controversy were not within the boundaries of the original grant to Beaubien and Miranda, as issued to them by the government of Mexico, and as described by the alcalde who delivered juridical possession, and also as described in the diseno or map made by the alcalde and introduced in evidence. (Pr. Rec., 56.) The court refused to admit the evidence, holding that the patent went back by relation to the Mexican government, and that it must be *conclusively presumed* that the boundary as described in the patent was the same as the boundary of the grant as originally made. (Pr. Rec., 56.) The court thereupon directed the jury to find for the plaintiff. (Pr. Rec., 57.)

The only question, therefore, involved in this case is a question of law, as to whether the survey made by the government, and the issuance of the patent in conformity with such survey, can operate to deprive the defendants of the ownership of the land, all right in which had passed from the government to them prior to such survey; or, in other words, whether the United States, having parted with its ownership of land, can afterwards make a survey and patent to another, which will deprive the party who theretofore acquired the government right in the land of his ownership. The point was raised upon the record by the refusal of the court to admit certain evidence, offered as above stated, and by his instruction to the jury as set out in the following specification of errors, which are the ones relied upon.

I.

ERRORS RELIED UPON.

1. The court refused to admit, upon the trial, evidence offered by the defendants to prove that the original boundary of the grant to Beaubien and Miranda, as described in the original grant to them, by the government of Mexico, and as described by the Alcalde in fixing the boundary of the grant, and as described in the diseno or map introduced in evidence, did not include the premises in question; but that the northern boundary of said grant, if run as described in the original grant, or in the writ of possession issued by the Alcalde, or as shown on said map would fall south of the premises in question. (Print. Rec., 56.)

2. That the court erred in instructing the jury to find for the plaintiff. (Print. Rec., 57.)

II.

BRIEF AND ARGUMENT.

Our argument upon the points involved in this case as arrising upon the above assignment of error, would seem necessarily to be limited to the single question as to whether or not the patent which issued to Beaubien and Miranda was conclusive evidence as to the extent of the original grant by the Mexican government. There is, however, one other point which should be referred to, and that is whether the defendants had such a title under their final receiver's receipt as would enable them to defend against an action of ejectment. This latter point was not made in the court below; in fact, it was admitted that they would have as complete a defense under said final receipt as under a patent issued thereon. But as the question may be raised upon this writ of error we will first discuss that point and then address ourselves to the main question in the case.

1. THE DEFENDANTS HAVING DONE EVERYTHING NECESSARY TO ENTITLE THEM TO A PATENT, AND BEING IN POSSESSION OF THE LAND, MAY PRESENT THOSE FACTS AS A DEFENSE TO AN ACTION OF EJECTMENT IN THE FEDERAL COURT.

Ordinarily the boundary between law and equity in the Federal courts is well defined and strictly adhered to; and while the final receiver's receipt only vests in the claimant the complete equitable title to the premises, under which he could not *maintain* an action of ejectment, yet it is the established doctrine of this court that he may set up the equitable title in him, and the manner in which it was acquired as a *defense* to such action, for the purpose of showing that the United States had parted with all its interest in the land, and consequently that the patent which subsequently issued to another for the same land was void. On this question the case of *Wirth* v. *Branson*, 98 U. S., 118, is directly in point. The court there says: "The land in question was shown to have "been located in his favor in due form under a regular "military land warrant, and no attempt was made to "show that the location was ever vacated or set aside. "Whilst it was in force no other could lawfully be made "on the same land. A subsequent location, though fol-"lowed by a patent, would be void. Everything was "done which was required to be done to entitle Egerton "to a patent for the land. Being for military bounty "no price was payable therefor. The land became "segregated from the public domain and subject to "private ownership, and all the incidents and liabilities "thereof. The rule is well settled by a long course of "decisions, that when public lands have been surveyed "and placed in the market, or otherwise opened to pri-"vate acquisition, a person who complies with all the "requisites necessary to entitle him to a patent in the "particular lot or tract is to be regarded as the equi-"table owner thereof, and the land is no longer open to "location. The public faith has become pledged to him "and any subsequent grant of the same land to another "party is void, unless the first location or entry be "vacated and set aside."

The case of *Simmons* v. *Wagoner* 101 U. S., 260, is also directly in point on this question. This court there held that a party in possession, holdingthe uncanceled certificate of the register of the land office showing full payment for land, has a valid defense to the action of ejectment by a party who entered the land subsequently and obtained a patent. The court there says: "The question is not whether Wagoner, if he was out of possession, could recover in ejectment, but whether Simmons can recover as against him. He is in a situation to avail himself of the weakness of the title of his adversary and need not assert his own."

Where the United States has parted with its title, the patent is void.

Wright v. *Roseberry*, 121 U. S., 519.

In *Stelle* v. *Smelting Company*, 106 U. S., 452, where it is held that a patent must prevail in an action of ejectment over an equitable title, express exception is made of those cases where the government had previously disposed of the land. See also

Doolan v. *Carr*, 125 U. S., 618.

In the case at bar the government had thrown open the land to settlement, and had had it surveyed by the proper official of the land department. The entry had been made in due form by Richard D. Russell, he had complied with all the provisions of the law, and the government had issued to him its final receipt. He had done all that was necessary to entitle him to a patent for the land and was vested with the full equitable title. The United States, having parted with all its interest in the premises, could not issue a valid patent to another so long as his entry remained uncanceled; and he therefore was in a position to set up these rights in defense of the action of ejectment to show that the subsequent patent by the government, so far as it related to the premises in question, and attempted to convey a title thereto to another, was void. And for the purpose of defense in this case these facts were as effective as though the United States had issued a patent to the defendant pursuant to his entry and final receipt. This proposition was not controverted in the court below, but it was contended that even if a patent had issued to the defendants prior to the patent to the plaintiff, such prior patent would not have been a defense to this proceeding. This brings us to the main question in the case, and upon that point we contend that

2. THE PATENT ISSUED IN 1879 UPON THE MEXICAN GRANT TO BEAUBIEN AND MIRANDA IS NOT CONCLUSIVE EVIDENCE AS TO THE BOUNDARY OF THAT GRANT AS AGAINST THE DEFENDANTS, WHO RECEIVED THEIR TITLE FROM THE GOVERNMENT IN 1876.

It would seem that no argument or citation of authority should be necessary in support of the above proposition, which is based upon the well-known rule of evidence that, where one has parted with his title to lands, he can execute no instrument nor do any act which will in any manner be binding upon or affect the rights of his prior grantee. But it would seem that the trial judge in this case deemed that there is attached to a grant from the Mexican government a peculiar sanctity which renders it superior to a right which emanates from the government of the United States, and which places it in the power of an agent of the government, in fixing the limits of such grant, to not only bind the United States by his action, but, without notice, to obliterate property rights and divest titles derived from the government long years before. If the surveyor general of New Mexico could so stretch the northern boundary of this grant as to include the farm of the defendants, and forever estop them from disputing his right to do so, then he could as well have stretched that boundary so as to include the cities of Trinidad and Pueblo, and their thousands of inhabitants would have been rendered homeless, and millions of dollars of vested property rights have been divested without process of law by the arbitrary act of a mere government agent.

But such a claim posseses no superiority over any other claim emanating from the United States.

" Inchoate rights, such as those of Cerre, were of im-
" perfect obligation, and affected only the conscience of
" the new sovereign. They were not of such nature
" (until that sovereign gave them a validity and efficacy
" which they did not before possess), that a court of law
" or equity would recognize or enforce them. When
" confirmed by Congress they became American titles, and
" took their validity *wholly from the act of confirmation*
" and not from any French or Spanish element which
" entered into their previous existence."

Dent v. *Emmeger*, 14 Wall., 308.

The same language can be appropriately applied to all claims having their origin in Mexican grants. The treaty with Mexico only provided for doing what the United States would have been in conscience bound to do without its provisions—that is, to protect vested rights in the territory ceded.

But is the grant in question a grant from the Mexican government, or is it merely a grant from the Congress of the United States? The answer to this question must depend upon whether as a Mexican grant it was valid.

The National Colonization Law passed by the Mexican

Congress on August 18, 1824, limited the quantity of land to be granted in accordance with its provisions to an individual to eleven square leagues, and to the two individuals to whom this grant was made the maximum amount would be twenty-two square leagues, or less than 100,000 acres, whereas the grant in question embraced nearly 2,000,000 acres.

1 White's Land Laws in Cal., &c., 602.

It is quite certain from the document submitted to Congress at the time this grant was confirmed, that it must be construed as a grant under the law of August 18, 1824, and not at an *empresario* grant under the Mexican law of November 21, 1828, as none of the conditions attached to an *empresario* grant was complied with on the part of the grantee; and this court held, on a rehearing of the *Maxwell Land Grant Case*, 122 U. S., 365, that while it partook of some of the characteristics of an *empresario* grant, it was not one. Having been issued, then, in violation of the Mexican law, the grant, prior to its confirmation, was invalid. It certainly cannot be contended that it possessed any validity beyond that of a floating grant of twenty-two square leagues, to be taken from the larger body described in the grant.

But had the Mexican Government any authority to grant the lands in question? We contend that it had not: that the lands were then embraced within the limits of the Republic of Texas, and hence not subject to the Mexican authorities.

On November 7, 1835, the Mexican State of Texas declared its independence of the Mexican Government, and on December 19, 1836, the Congress of the new government, styling itself the Republic of Texas, passed an act for the establishment of its boundaries, which provided that the boundaries on the north and east should remain as fixed by the treaty between the United States and Spain in 1819, and between the United States and Mexico in 1828. On the south and west the boundary was from the mouth of the River Sabine, along the Gulf, thence three leagues from shore, to the mouth of and up the Rio Grande River to its source, and thence due north to the 44th parallel of north latitude.

Donaldson's Public Domain, 121.

In March, 1837, the independence of the Republic of Texas was recognized by the United States; and on December 29, 1845, Texas was admitted into the Union as a state. To establish her territory as far south and west as the River Rio Grande was one of the principal causes of our war with Mexico. On February 2, 1848, the treaty of Guadalupe Hidalgo was signed, and on the 26th of May a protocol thereto in which was stated the intention of the United States to respect legitimate titles to property, and that "legitimate titles to every description "of property, personal and real, existing in the ceded "territories, are those which were legitimate titles under "the Mexican law in California and New Mexico up to "the 13th of May, 1846, and in Texas up to the 2d of "March, 1836."

Public Treaties, 502.

It was contended by the State of Texas, after its admission into the Union, that its boundaries were as fixed by the Act of 1836 of the Republic of Texas, and that its limits extending to the Rio Grande embraced all those portions of New Mexico and Colorado which lie east of that river. By the terms on which Texas came into the

Union, it was to retain the title to all public lands within its limits. On September 22, 1847, General Kearney being then the military governor of New Mexico, published a series of laws for the government of the territory; but as Texas had claimed all that portion east of the Rio Grande, Mr. Marcy, the secretary of war, by dispatch of October 12, 1848, instructed the commanding officer at Santa Fe to *respect the authority of Texas* in that territory.

Donaldson's Public Domain, 135.

On September 9, 1850, by Act of Congress, the Territory of New Mexico was organized with its present limits, and, by another act of the same date, an offer was made to the State of Texas to pay it $10,000,000 for a cession by it of its claim to lands outside of its present limits. These lands include those parts of New Mexico and Colorado which lie east of the Rio Grande, a part of Kansas, and a strip of public land immediately north of the Panhandle of Texas.

On November 25, 1850, this offer was accepted by the State of Texas, and on December 13, 1850, the President of the United States announced the act of September 9, 1850, organizing the Territory of New Mexico, to be operative.

Id., 135.

It is quite evident from these facts that the lands in question falling, as they do, within the boundaries of the Republic of Texas, the Mexican government had no authority to make any grant of them which would be a valid grant under the terms of the treaty of Guadalupe Hidalgo.

If we are correct in this position, it will therefore be seen that at the time this claim was presented to Congress for confirmation it had no validity as a grant of a distinct territory, for two reasons: *First*, because it embraced a much larger quantity of land than allowed by the Mexican law; and, *second*, it was a part of Texas at the time the grant was made, and not subject to grant by the Mexican government.

While we agree with this court that, as decided in the Maxwell Land Grant case, *supra*, the act of Congress confirming the grant rendered it a valid grant to its full extent, yet such was the result not because the grant possessed any validity when made, but because the confirmation by Congress operated as a grant *de novo* from the government of the United States. As a grant by the United States it certainly had no greater force or effect than any other title derived from the United States, whether by special act of Congress or acquired under the general law relating to homesteads under which the title of the defendants was obtained.

Considering then that all the interest of the United States in the premises in question passed to the defendants at the time they received their final receiver's receipt in 1876, it is quite clear that the rights of the parties were fixed at that time; and it was not within the power of the United States by any subsequent act to divest the defendants of their rights in the premises and transfer them to the plaintiff. It was purely a question of fact to be established upon the trial of this case in the court below, whether or not the lands in question were a part of the grant under which the plaintiff claimed, as that grant was confirmed by Congress. And in determining that question the patent to the plaintiff from the United States, and the survey upon which it issued were not competent evidence against the defendants, much less conclusive. The limits of the plaintiff's grant could only be considered as described in the papers presented to Congress and upon which it acted in the confirmation of the grant.

The United States having parted with all its rights to the defendant's ancestor in 1876, the burden was upon the plaintiff in the court below to show that the United States was not then the owner of the premises in question, but that the lands were included within the limits of the plaintiff's confirmed grant as originally bounded.

But the defendants offered to go still further and to affirmatively prove that their lands were not within the original limits of the grant. This right the court denied them, holding that the subsequent patent which was not issued by the United States until three years after it had parted with all its claim, was conclusive evidence that the boundary as described in that patent was the same as the original boundary of the grant.

In *Pinkerton* v. *Ledeaux*, 129 U. S., 346, this court held in the case of a Mexican claim, that if from the description in the grant the jury can not locate the land they must find for the defendant. It is there held that the question whether the tract in dispute was was within the boundaries of the grant, was for the jury. At the time the dispute in that case arose, the grant had not been patented. Would this court have held that the officers of the United States could have surveyed that grant and issued a patent therefor fixing the boundaries that before were so uncertain as to render it void, in such a manner as to include lands to which the United States had parted with its title, and by that act have divested those titles theretofore derived from the United States without giving the parties interested an opportunity to be heard? We think not. And yet that is exactly what the court below did in this case. It held that years after the defendants had acquired all the rights of the United States in these premises, the government might, by some arbitrary power unknown to the civilized governments of the world, take back what had been granted to one and paid for and give it to another without a judicial hearing. Such an interpretation of the law is contrary to every instinct of justice, and opposed to the decisions of this court.

In *Simmons* v. *Wagoner*, *supra*, this court said: "It " is well settled that when lands have once been sold by " the United States and the purchase money paid, the " lands sold are segregated from the public domain, and " are no longer subject to entry. A subsequent sale and " grant of the same lands to another person would be " absolutely null and void so long as the first sale con- " tinued in force. *Wirth* v. *Branson*, 98 U. S., 118; " *Frisbie* v. *Whitney*, 9 Wall., 187; *Lyttle* v. *The State* " *of Arkansas*, 9 How., 314. Where the right " to a patent has once become vested in a pur- " chaser of public lands, it is equivalent, so far as " the government is concerned, to a patent actually " issued. The execution and delivery of the patent " after the right to it has become complete are the mere " ministerial acts of the officers charged with that duty. " *Barney* v. *Dolph*, 97 U. S., 652; *Stark* v. *Starrs*, 6 " Wall. 402."

In *Steele* v. *Smelting Company*, *supra*, it is said: "If " they (the premises) never were the property of the " United States, or if no legislation authorized their sale, " or if they had been previously disposed of or reserved " from sale, the patent would be inoperative to pass the " title, and objection to it could be taken on these

" grounds at any time and in any form of action. In " that respect the patent would be like the deed of an " individual, which would be inoperative if he never " owned the property, or had previously conveyed it, or " had dedicated it to uses which precluded its sale."

Again in *New Orleans* v. *United States*, 35 U. S., 663, it is said: " It would be a dangerous doctrine to " consider the issuing of a grant as conclusive evidence " of right in the power which issued it. On its face it is " conclusive and can not be controverted; but if the " thing granted was not in the grantor, no right passes " to the grantee. A grant has been frequently issued " by the United States for land which had been pre- " viously granted and the second grant has been held to " be inoperative."

In *Wright* v. *Roseberry*, *supra*, Mr. Justice FIELD, speaking for this court said: " It would be a most ex- " traordinary doctrine if the holder of a conveyance of " land from a state were precluded from establishing his " title, simply because the United States may have sub- " sequently conveyed the land to another, and especially " from showing that years before they had granted the " property to the state, and thus were without title at " the time of their subsequent conveyance."

In *Cornelius* v. *Kessel*, 128 U. S., 461, in commenting upon the power of the Commissioner of the General Land Office to cancel an entry to land and issue a patent thereto to another, it is said: " But the power of super- " vision and correction is not an unlimited or an arbi- " trary power. It can be exerted only when the entry " was made upon false testimony or without authority of " law. It cannot be exercised so as to deprive any per- " son of land lawfully entered and paid for. By such

" entry and payment the purchaser secures a vested interest in the property and a right to a patent therefor, " and can no more be deprived of it by order of the " commissioner than he can be deprived by such order " of any other lawfully acquired property."

In *Cragin* v. *Powell*, 128 U. S., 699, it is said:

" When the land department has once made and approved a governmental survey of public lands (the " plats, maps, field notes and certificates all having been " filed in the proper office) and has sold or disposed of " such lands, the courts have power to protect the private " rights of a party who has purchased in good faith from " the government against the interferences or appropriations of corrective surveys, made by that department " subsequently to such disposition or sale."

It is true that the grant was adjudged valid by this court to its full extent in the Maxwell Land Grant case, a suit brought by the United States to set aside the patent and survey. We have already said that we agree with this court that the confirmation of the grant by Congress rendered it valid to its full extent as it then existed; and the only other question in that case was as to whether fraud had been practiced or mistake made in fixing the boundaries. This court there held as its opinion: " Upon a " consideration of all the evidence before us that the " survey was located as nearly in accordance with the " terms of the grant as it is possible now to ascertain " them."

But the rights of an individual who acquired the government title prior to that survey are not to be divested by the arbitrary fixing of the boundary lines of the grant in what are deemed their *approximate* places. Nor are the plaintiffs in error in any manner precluded by the decision in that case.

"No adjudication against the government in a suit by
"it to set aside a patent estops an individual not a party
"thereto from thereafter setting up his equitable rights
"in the land for which the patent issued."

Ard v. *Brandon*, 15 Sup. Ct. Rep., 408.

The ancestor of the plaintiffs in error went into possession of this land in good faith twenty-three years ago, and sixteen years before this suit was brought. The land had been surveyed by the Government and thrown open to settlement as public land and he acquired all the rights of the United States therein. If it was public land the rights thus acquired should be protected, and in determining that question of fact the plaintiffs in error are entitled to be heard.

As said in *Ard* v. *Brandon*, *supra:*

"The law deals tenderly with one who in good faith
"goes upon the public lands with a view of making a
"home thereon. If he does all that the statute pre-
"scribes as the condition of acquiring rights, the law
"protects him in those rights, and does not make their
"continued existence depend alone upon the question
"whether or not he takes an appeal from the adverse
"decision of the officers charged with the duty of acting
"upon his application."

We contend that the burden was on the plaintiff below to show that these lands were within the original limits of its grant, as that grant existed at the date of the issuance of the final duplicate receipt to Richard D. Russell, or if the patent was *prima facie* evidence of that fact, and the burden was on the defendants to prove that the premises in question were not within the original grant, then it was error for the court to exclude the evidence offered for that purpose. In either view the judgment is wrong, and should be reversed.

Respectfully submitted.

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Supreme Court of the United States

OCTOBER TERM, 1894.

No. 321.

Marion Russell, *Plaintiff in Error*,
vs.
The Maxwell Land Grant Company.

Brief for Defendant in Error.

The sole question in this case is whether the patent of the United States for the Maxwell Land Grant, dated May 19, 1879, (Rec. pp. 12–16,) based upon the confirmation of a Mexican grant by Act of Congress of June 21, 1861, (recited in the patent, Rec. p. 14,) is superior to a Land Office receipt dated September 5, 1876, (Rec. p. 31,) based upon a homestead entry of a tract of land within the patented limits, initiated April 6, 1874, (Rec. p. 30,) under the public land laws of the United States.

This question is settled by repeated adjudications of this Court. Argument is unnecessary, and we will merely refer to a few of the decided cases for the convenience of the Court.

The validity and effect of this particular patent have been passed upon.

Maxwell Land Grant Case, 121 U. S., 325.
Ibid, 122 U. S., 365.

And afterwards declared to be settled forever.

Interstate Land Co. vs. Maxwell Co.,
139 U. S. 569, 580:—

Wherein this Court declared, on p. 580, that:

"The confirmation and patenting of the grant to Beaubien and Miranda operated to divest the United States of all their rights to the land embraced in the grant which this country acquired from Mexico by the treaty of Guadalupe Hidalgo."

A patent duly issued pursuant to law is conclusive evidence of title in an action at law.

Beard vs. Federy, 3 Wall., 478.
Smelting Co. vs. Kemp, 104 U. S., 636, 640–648.
More vs. Steinbach, 137 U. S., 70, 83.

When a patent issues it relates back to the inception of the right of the patentee, so as to cut off intervening claimants.

Shepley vs. Cowan, 91 U. S., 330.
Langdeau vs. Hanes, 21 Wall., 521, 528.
R. R. Co. vs. Price, 133 U. S., 496, 510.

The confirmation of June 21, 1860, was equivalent to a new grant, and passed the title absolutely as of that date. The subsequent patent was merely evidence of such title.

Ryan vs. Carter, 93 U. S., 78, 82.
Whitney vs. Morrow, 95 U. S., 551, 554.
Ibid, 112 U. S., 693, 695.
Maxwell Land Grant Case, 121 U. S., 325.

The "other persons," whose adverse rights are not affected by the patent, are not entrymen under the land laws, or the claimants of any rights derived from the United States. They are only—

"persons claiming by superior title, such as would enable them to resist successfully any action of the government in disposing of the property."

More vs. Steinbach, *supra*.
Carpentier vs. Montgomery, 13 Wall., 495.
Manning vs. San Jacinto Tin Co., 7 Sawyer, 418:—

Where this expression in such patents is fully discussed.

Respectfully submitted,
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